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SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AG70

Surety Bond Guarantee Program; Miscellaneous Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is issuing this final rule to change the regulations for SBA's Surety Bond Guarantee Program in four areas. First, as a condition for participating in the Prior Approval and Preferred Surety Bond Programs, this rule clarifies that a Surety must directly employ underwriting and claims staffs sufficient to perform and manage these functions, and that final settlement authority for claims and recovery is vested only in salaried employees of the Surety. Second, this rule provides that all costs incurred by the Surety's salaried claims staff are ineligible for reimbursement by SBA, except the amounts actually paid for reasonable and necessary travel expenses. In addition, the Surety may seek reimbursement for amounts paid for specialized services that are provided by outside consultants in connection with the processing of a claim. Third, the rule modifies the criteria for determining when a Principal that caused a Loss to SBA is ineligible for a bond guaranteed by SBA. Fourth, the rule modifies the criteria for admitting Sureties to the Preferred Surety Bond Program by increasing the Surety's underwriting limitation, as certified by the U.S. Treasury Department on its list of acceptable sureties, from at least $2 million to at least $6.5 million.

DATES: This rule is effective May 23, 2016.

FOR FURTHER INFORMATION CONTACT: Barbara J. Brannan, Office of Surety Guarantees, (202) 205–6545 or email: *Barbara.brannan@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The U.S. Small Business Administration (SBA) guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract.

On April 14, 2015, SBA published a notice of proposed rulemaking with a request for comments in the **Federal Register** (80 FR 19886). The rule proposed to change the regulations governing SBA's Surety Bond Guarantee Program (SBG Program) in the following four areas that had prompted questions from participating Sureties:

(1) The rule proposed to clarify that to participate in the Prior Approval and Preferred Surety Bond (PSB) Programs, a Surety must directly employ underwriting and claims staffs sufficient to perform and manage these functions, and that final settlement authority for claims and recoveries must be vested only in the Surety's salaried claims staff.

(2) The rule proposed to specify that the costs that the Surety incurs for its salaried claims staff are ineligible for reimbursement by SBA and that the Surety may seek reimbursement for amounts actually paid by the Surety for specialized services that are provided by an outside consultant, which is not an Affiliate of the Surety, in connection with the processing of a claim, provided that such services are beyond the capability of the Surety's salaried claims staff.

(3) The rule proposed to modify the conditions under which a Principal, and its Affiliates, would be deemed ineligible for a bond guaranteed by SBA in the circumstance where the Principal has previously defaulted on an SBA guaranteed surety bond. The rule provided that a Principal, or any of its Affiliates, would lose eligibility for further SBA bond guarantees if the Principal, or any of its Affiliates, had defaulted on an SBA guaranteed bond resulting in a Loss (as defined in 13 CFR 115.16) that had not been fully reimbursed to SBA, or if SBA had not been fully reimbursed for any Imminent Breach payments. It also provided that the Principal, or any of its Affiliates, may be reinstated only if SBA had been fully repaid for the Loss or for the Imminent Breach payment, unless SBA's Office of Surety Guarantees (OSG) found good cause for reinstating the Principal. In addition, the discharge of the indebtedness in bankruptcy would no longer be specifically included as a condition for reinstatement, but the circumstances of such discharge could be considered as part of OSG's good cause analysis for reinstatement. The Proposed Rule also clarified that the same standards regarding the loss of eligibility and the conditions for reinstatement would apply to both the Prior Approval Program and the PSB Program.

(4) The rule proposed to modify the criteria for admitting a Surety to participate in the PSB Program by increasing the Surety's underwriting limitation, as certified by the U.S. Treasury Department on its list of acceptable sureties on Federal bonds, from at least $2 million to at least $6.5 million.

The comment period was open until June 15, 2015, and SBA received comments from one trade association and one surety company. One other comment was received from an individual, but this comment did not relate to the Proposed Rule or the SBG Program.

One of the commenters indicated its support for the proposed changes that modify the conditions under which a Principal, and its Affiliates, would be deemed ineligible for a bond guaranteed by SBA and that modify the requirements for reinstatement. The commenter also expressed support for SBA's effort to address the failure of some participating Sureties to maintain adequate in-house claims personnel, and to ensure that participating Sureties handle their SBA-guaranteed bond claims in the same manner as their other bond claims.

However, both commenters expressed concern that the proposed changes to 13

CFR 115.11 and 115.16(e)(1) would not create clear standards with respect to when SBA would reimburse Sureties for the costs of using outside consultants in connection with bond claims. Under the proposed 13 CFR 115.16(e)(1), a Surety may seek reimbursement for "[a]mounts actually paid by the Surety for specialized services that are provided under contract by an outside consultant, which is not an Affiliate of the Surety, in connection with the processing of a claim, provided that such services are beyond the capability of the Surety's salaried claims staff." The commenters were concerned that this standard is too limiting, and instead suggested that SBA amend 13 CFR 115.16(e)(2) to allow Sureties to seek reimbursement for the "reasonable" costs of any outside consultants. The commenters indicated that this standard would cover a broader range of consultants, such as construction, accounting or other professionals, that assist Sureties in investigating and settling claims. They argued that the services of these outside consultants may become necessary to avoid delay and to mitigate expenses and that these expenses would be recoverable from the Principal under the General Indemnity Agreement obtained under 13 CFR 115.17(a).

SBA has considered the suggestion but has concluded that the reasonable cost standard proposed by the commenters does not adequately reflect the requirement that Sureties employ sufficient in-house staff to handle all customary claims and recovery functions. SBA expects participating Sureties to employ adequate in-house staff to perform these functions and to bear the full cost of performing such functions. The Proposed Rule does recognize that there may be circumstances where an outside consultant with a particular expertise beyond the capabilities of the Surety's salaried claims staff is needed in connection with a claim, and would allow Sureties to seek reimbursement for the costs of such expertise. As described in the preamble to the Proposed Rule, an example of such "specialized services . . . beyond the capability of the Surety's salaried claims staff" would be the services of a structural engineer that are needed to evaluate the Principal's compliance with engineering specifications, and a commenter agreed with this example. SBA believes that its proposed language is sufficiently broad to cover the various situations that may arise.

In addition, a commenter suggested that the proposed requirement in 13 CFR 115.11 that the Surety must have a salaried staff "to perform all claims and recovery functions" be revised by removing the term "all" to account for those instances where outside consultants are retained to assist in claim and recovery functions. Instead of removing the term "all", SBA is revising this section to recognize that the Surety may seek reimbursement for specialized services provided by outside consultants under 13 CFR 115.16(e)(1). Again, SBA expects that these consultants will be needed to provide a specialized service that is beyond the expertise of the Surety's salaried claims staff.

Finally, both commenters stated that travel by in-house claims staff is often necessary and expressed concern that the proposed language in 13 CFR 115.16(f)(1) excludes travel costs as a reimburseable expense. SBA agrees that Sureties may seek reimbursement for reasonable and necessary travel expenses by their in-house claims staff, and has amended the language in 13 CFR 115.16(e)(1) and 115.16(f)(1) accordingly.

II. Section-by-Section Analysis

Section 115.11. As proposed, this provision required that an applicant have a salaried staff that is employed directly (not an agent or other individual or entity under contract with the applicant) to oversee its underwriting functions and to perform all claims and recovery functions. For clarity, SBA is revising this section to recognize that, with respect to claims functions, a Surety may contract with an outside consultant for a specialized service the costs of which may be reimbursable under 13 CFR 115.16(e)(1). SBA expects Sureties to employ salaried claims staff capable of handling the routine processing and administration of claims and recovery, and to not seek reimbursement for the costs of these functions under 115.16(e)(1), except, as revised by this final rule, Sureties may seek reimbursement for the reasonable and necessary travel expenses of its salaried claims staff. This section also provides that final settlement authority for claims and recovery actions must be vested only in the applicant's "claims staff" and, for clarity and consistency, SBA is revising this phrase to read "salaried claims staff". There are no other changes to this section as proposed.

Section 115.13(a). As proposed, this provision added a new paragraph (7) to provide that, to be eligible for an SBA guaranteed bond, neither the Principal nor any of its Affiliates may be ineligible for an SBA guaranteed bond under the grounds set forth in 13 CFR 115.14. There are no changes to this provision as proposed.

Section 115.14. SBA is modifying the criteria regarding the loss of the Principal's eligibility for future assistance and the conditions for reinstatement by providing that a Principal loses eligibility for further SBA bond guarantees if the Principal, or any of its Affiliates, has defaulted on an SBA guaranteed bond that resulted in a Loss (as defined in 13 CFR 115.16) that has not been fully reimbursed to SBA, or if SBA has not been fully reimbursed for any Imminent Breach payments. OSG will have the authority to waive this requirement for good cause.

In addition, as proposed, the same criteria on ineligibility and conditions for reinstatement would apply to both the Prior Approval Program and the PSB Program. As the same conditions for reinstatement will apply to both the Prior Approval Program and the PSB Program, the conditions for reinstatement set forth in 13 CFR 115.36(b) and (c) will be moved in their entirety to 13 CFR 115.14(b) and (c), and the heading of this section will be changed to "Loss of Principal's eligibility for future assistance and reinstatement of Principal."

There are no changes to this provision as proposed.

Section 115.16(e)(1). As proposed, this provision provided that SBA would reimburse amounts actually paid by a Surety for specialized services provided under contract by outside consultants in connection with the processing of a claim, provided that such services are beyond the capability of the Surety's salaried claims staff. Based on comments, SBA is revising this provision to allow the Surety to seek reimbursement for travel expenses incurred by the Surety's claims staff, and to provide that the cost of the consultant's services and the travel expenses of the Surety's claims staff must be reasonable and necessary, and must specifically concern the investigation, adjustment, negotiation, compromise, settlement of, or resistance to a claim for Loss resulting from the breach of the terms of the bonded Contract. These changes, coupled with the changes made to 115.11, clarify that a Surety cannot outsource routine claims functions and responsibilities or include such costs in its reimbursement requests submitted to SBA under the bond guarantee agreement. With the exception of specialized work that falls outside the scope of the routine processing and administration of claims, the Surety will perform the claims function at no cost to the Agency (other than the reasonable and necessary travel costs of claims staff).

Section 115.16(f)(1). As proposed, this provision clarified that all costs incurred by the Surety's salaried claims staff, whether or not specifically allocable to an SBA guaranteed bond, are excluded from the definition of Loss. Costs incurred by the Surety's salaried claims staff, like all other overhead of the Surety, are the responsibility of the Surety. Based on the comments, and for consistency with section 115.16(e)(1), an exception for the reasonable and necessary travel expenses of the Surety's salaried claims staff is being added to this provision.

Section 115.18(a)(2). As proposed, SBA is revising this paragraph to provide that the Surety's failure to continue to comply with the requirements set forth in section 13 CFR 115.11 are sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status. There are no changes to this provision as proposed.

Section 115.36. By including the conditions for reinstatement and the standard for underwriting after reinstatement in 13 CFR 115.14(b) and (c), the rule, as proposed, renamed the heading of this section to "§ 115.36 Indemnity settlements", deleted the paragraph heading "(a) Indemnity settlements.", removed paragraphs (b) and (c), and renumbered paragraphs "(1)", "(2)", and "(3)", as "(a)", "(b)", and "(c)", respectively. There are no changes to this provision as proposed.

Section 115.60(a)(1). As proposed, SBA conformed this provision to the statutory increase in the maximum contract amount for which a bond may be guaranteed by removing "$2,000,000" and inserting "$6,500,000" in its place. There are no changes to this provision as proposed.

Section 115.60(a)(5). By including in 13 CFR 115.11 the requirement that all Sureties vest final settlement authority for claims and recovery only in their salaried claims staff, this rule removes 13 CFR 115.60(a)(5) and renumbers the existing paragraph 13 CFR 115.60(a)(6) accordingly. There are no changes to this provision as proposed.

Compliance with Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act (5 U.S.C. 800).

Executive Order 13563

In accordance with Executive Order 13563, SBA discussed with several surety companies issues regarding the SBG Program regulations. In particular, SBA discussed the underwriting and claims staffing requirements that Sureties must meet in order to participate in SBA's SBG Program. SBA also discussed with these companies the conditions for reimbursement of the costs incurred by their claims staffs. Generally, the Sureties responded favorably to SBA's position that changes were necessary to clarify or amend the regulations on these issues.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C., Chapter 35, SBA has determined that this rule will not impose any new reporting or recordkeeping requirements.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. There are 23 Sureties that participate in the SBA program, and no part of this rule would impose any significant additional cost or burden on them. Consequently, this rule does not meet the significant economic impact on a substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, SBA amends 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

■ 2. Amend § 115.11 by adding three sentences at the end to read as follows:

§ 115.11 Applying to participate in the Surety Bond Guarantee Program.

* * * At a minimum, each applicant must have salaried staff that is employed directly (not an agent or other individual or entity under contract with the applicant) to oversee its underwriting function and perform all claims and recovery functions other than specialized services the costs of which may be reimbursable under 13 CFR 115.16(e)(1). Final settlement authority for claims and recovery must be vested only in the applicant's salaried claims staff. The applicant must continue to comply with SBA's standards and procedures for underwriting, administration, claims, recovery, and staffing requirements while participating in SBA's Surety Bond Guarantee Programs.

■ 3. Amend § 115.13 by adding paragraph (a)(7) to read as follows:

§ 115.13 Eligibility of Principal.

(a) * * *

(7) *No loss of eligibility.* Neither the Principal nor any of its Affiliates is ineligible for an SBA-guaranteed bond under § 115.14.

* * * * *

■ 4. Amend § 115.14 as follows:

■ a. Revise the section heading, and paragraphs (a)(4) and (b);

■ b. Add paragraph (c).

§ 115.14 Loss of Principal's eligibility for future assistance and reinstatement of Principal.

(a) * * *

(4) The Principal, or any of its Affiliates, has defaulted on an SBA-

guaranteed bond resulting in a Loss that has not been fully reimbursed to SBA, or SBA has not been fully reimbursed for any Imminent Breach payments.

* * * * *

(b) *Reinstatement of Principal's eligibility.* At any time after a Principal becomes ineligible for further bond guarantees under paragraph (a) of this section:

(1) A Prior Approval Surety may recommend that such Principal's eligibility be reinstated, and OSG may agree to reinstate the Principal if:

(i) The Surety has settled its claim with the Principal, or any of its Affiliates, for an amount that results in no Loss to SBA or in no amount owed for Imminent Breach payments, or OSG finds good cause for reinstating the Principal notwithstanding the Loss to SBA or amount owed for Imminent Breach payments; or

(ii) OSG and the Surety determine that further bond guarantees are appropriate after the Principal was deemed ineligible for further SBA bond guarantees under paragraph (a)(1), (2), (3), (5) or (6) of this section.

(2) A PSB Surety may:

(i) Recommend that such Principal's eligibility be reinstated, and OSG may agree to reinstate the Principal, if the Surety has settled its claim with the Principal, or any of its Affiliates, for an amount that results in no Loss to SBA or in no amount owed for Imminent Breach payments, or OSG finds good cause for reinstating the Principal notwithstanding the Loss to SBA or amount owed for Imminent Breach payments; or

(ii) Reinstate a Principal's eligibility upon the Surety's determination that further bond guarantees are appropriate after the Principal was deemed ineligible for further SBA bond guarantees under paragraph (a)(1), (2), (3), (5) or (6) of this section.

(c) *Underwriting after reinstatement.* A guarantee application submitted after reinstatement of the Principal's eligibility is subject to a very stringent underwriting review.

■ 5. Amend § 115.16 by revising paragraphs (e)(1) and (f)(1) to read as follows:

§ 115.16 Determination of Surety's Loss.

* * * * *

(e) * * *

(1) Amounts actually paid by the Surety for specialized services that are provided under contract by an outside consultant, which is not an Affiliate of the Surety, provided that such services are beyond the capability of the Surety's salaried claims staff, and amounts actually paid by the Surety for travel expenses of the Surety's claims staff. The cost of the consultant's services and the travel expenses of the Surety's claims staff must be reasonable and necessary and must specifically concern the investigation, adjustment, negotiation, compromise, settlement of, or resistance to a claim for Loss resulting from the breach of the terms of the bonded Contract. The cost allocation method must be reasonable and must comply with generally accepted accounting principles; and

* * * * *

(f) * * *

(1) Any unallocated expenses, all direct and indirect costs incurred by the Surety's salaried claims staff (except for reasonable and necessary travel expenses of such staff), or any clear mark-up on expenses or any overhead of the Surety, its attorney, or any other consultant hired by the Surety or the attorney;

* * * * *

■ 6. Amend § 115.18 by revising paragraph (a)(2) to read as follows:

§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.

(a) * * *

(2) *Regulatory violations, fraud.* Acts of wrongdoing such as fraud, material misrepresentation, breach of the Prior Approval or PSB Agreement, the Surety's failure to continue to comply with the requirements set forth in § 115.11, or regulatory violations (as defined in § 115.19(d) and (h)) also constitute sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status.

* * * * *

■ 7. Amend § 115.36 as follows:

■ a. Revise the section heading;

■ b. Remove the paragraph designation and heading "(a) Indemnity settlements.";

■ c. Remove paragraphs (b) and (c); and

■ d. Redesignate paragraphs (1), (2), and (3), as (a), (b), and (c).

§ 115.36 Indemnity settlements.

* * * * *

§ 115.60 [Amended]

■ 8. Amend § 115.60 as follows:

■ a. Amend paragraph (a)(1) by removing "$2,000,000" and adding "$6,500,000" in its place; and

■ b. Remove paragraph (a)(5) and redesignate paragraph (a)(6) as new paragraph (a)(5).

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–09302 Filed 4–21–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–1078; Special Conditions No. 25–616–SC]

Special Conditions: Dassault Aviation Model Falcon 5X Airplane; Use of Automatic Power Reserve (APR), an Automatic Takeoff Thrust Control System (ATTCS) for Go-Around Performance Credit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 5X airplane. This airplane will have a novel or unusual design feature associated with go-around performance credit when using an automatic takeoff thrust-control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault Aviation on April 22, 2016. We must receive your comments by June 6, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–1078 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Parker, FAA, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1509; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for their new Model Falcon 5X airplane. This airplane is a transport-category airplane to be operated in private/corporate transportation with a maximum of 19 passengers. The Model Falcon 5X airplane incorporates a low, swept wing and twin rear-fuselage-mounted Snecma Silvercrest turbofan engines. The fuselage is about 23 m long with a 26 m wingspan.

The current requirements of Title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing approach climb using ATTCS. Part 25 appendix I limits the application of performance credit for ATTCS to takeoff only.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 5X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–136.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 5X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 5X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Aviation Model Falcon 5X airplane will incorporate the following novel or unusual design feature.

An automatic takeoff thrust-control system (ATTCS), described as an automatic power reserve (APR) system, which is available at all times without any additional action or input from the pilot; and which the applicant proposes would not only function during the go-around, in addition to the takeoff phase of flight, but also allow the applicant to take performance credit for the system's function during that phase.

Discussion

Dassault Aviation proposes to include an APR system (a part 23 term; the part 25 term is ATTCS) in the Model Falcon 5X airplane. Dassault proposes to use the APR system during go-around, and is requesting approach climb performance credit for the use of the additional power APR up-trim provides.

The Model Falcon 5X powerplant control system comprises a full-authority digital electronic control (FADEC) for the Snemca Silvercrest engine. The engine FADEC system includes APR system functions. The proposed configuration, which is novel or unusual, provides for APR activation during takeoff and go-around flight operations, requiring no additional action from the pilot. The airplane performance data will be based on the availability of the up-trim power during takeoff and approach climb.

The part 25 standards applicable to the automatic advancement of reserve power, known as ATTCS and contained in § 25.904 and appendix I, specifically restrict performance credit for ATTCS to the takeoff phase of flight. At the time these standards were issued, the FAA considered including other phases of flight, including go-around. Concerns about flightcrew workload precluded including those additional phases of flight. As the preamble of Amendment 25–62 to part 25 states:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher power for the approach climb (Section 25.121(d)) than for the landing climb (Section 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight power settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase.

The ATTCS incorporated on the Model Falcon 5X airplane allows the pilot to use the same power-setting procedure during a go-around regardless of whether or not an engine fails. Because the ATTCS is always active, it will function automatically following an engine failure, and will advance the remaining engine to the APR power level.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model Falcon 5X airplane. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 5X airplanes.

1. The Model Falcon 5X airplane must comply with the requirements of 14 CFR 25.904 and appendix I to 14 CFR part 25 and the following requirements pertaining to the go-around phase of flight:

2. Definitions

a. *Takeoff/go-around (TOGA):* Throttle lever in takeoff or go-around position.

b. *Automatic takeoff thrust control system (ATTCS):* The ATTCS in Model Falcon 5X airplanes is defined as the entire automatic system available during takeoff and in go-around mode, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers (or increase engine power by other means on operating engines to achieve scheduled thrust or power increase), and furnish cockpit information on system operation.

c. *Critical time interval:* The definition of the critical time interval in 14 CFR appendix I 25.2(b) must be expanded to include the following:

i. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

1. The critical time interval begins at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding that corresponds to the 14 CFR part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

2. The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the 14 CFR part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the 14 CFR part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

ii. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the airplane flight manual (AFM).

iii. The critical time interval is illustrated in the following figure:

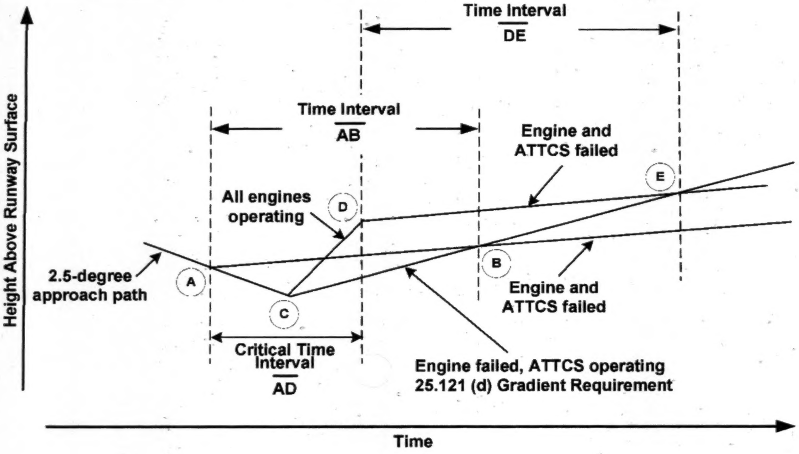
Time Interval
DE
Time Interval
AB
Engine and
ATTCS failed
All engines
operating
D
E
2.5-degree
approach path
A
B
C
Engine and
ATTCS failed
Critical Time
Interval
AD
Engine failed, ATTCS operating
25.121 (d) Gradient Requirement
Height Above Runway Surface
Time

Figure 1. Go-around ATTCS

The all-engines-operating go-around flight path, and the 14 CFR part 25 one-engine-inoperative approach climb gradient flight path (engine failed, ATTCS operating path in Figure 1), originate from a common point, point C, on a 2.5-degree approach path. The period of time, "time interval DE," from the point of simultaneous engine and ATTCS failure, point D, to the intersection of these flight paths, point E, must be no shorter than the corresponding time in Figure 2, "I25.2(b) time interval FG."

d. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the AFM.

e. The "critical time interval AD" is illustrated in Figure 1.

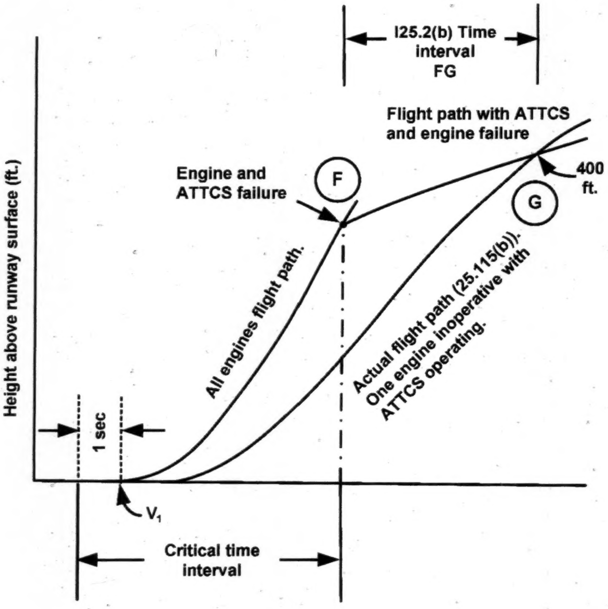
I25.2(b) Time
interval
FG
Flight path with ATTCS
and engine failure
Engine and
ATTCS failure
F
G
400
ft.
All engines flight path.
Actual flight path (25.115(b)).
One engine inoperative with
ATTCS operating.
Height above runway surface (ft.)
1 sec
V_1
Critical time
interval

Figure 2. Appendix I25.2(b), "Critical Time Interval" Illustration (ATTCS takeoff)

3. Performance and system reliability requirements: The applicant must comply with the performance and ATTCS reliability requirements as follows:

a. An ATTCS failure or a combination of failures in the ATTCS during the critical time interval (Figure 2):

i. Must not prevent the insertion of the maximum approved go-around thrust or power, or must be shown to be a remote event.

ii. Must not result in a significant loss or reduction in thrust or power, or must be shown to be an extremely improbable event.

b. The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of 14 CFR part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS functioning.

d. The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

e. The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

i. The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

ii. 111% of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the flightcrew to reset thrust or power.

4. Thrust setting

a. The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

i. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

ii. That shown to be free of hazardous engine response characteristics and not to result in any unsafe aircraft operating or handling characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

b. For approval to use an ATTCS for go-arounds, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

5. Powerplant controls

a. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

b. The ATTCS must be designed to:

i. Apply thrust or power on the operating engine(s), following any one-engine failure during a go-around, to achieve the maximum approved go-around thrust without exceeding the engine operating limits;

ii. Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under the existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent the engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure, provided that the means:

1. Is located on or forward of the power levers;

2. Is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and

3. Meets the requirements of § 25.777(a), (b), and (c).

iii. Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

iv. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

6. Powerplant instruments: In addition to the requirements of § 25.1305:

a. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

b. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during a go-around.

Issued in Renton, Washington, on April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–7301; Special Conditions No. 25–614–SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII–G500 Airplanes, Pilot Compartment View Requirements With an Enhanced Flight Vision System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVII–G500 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is an enhanced flight vision system (EFVS) that includes a head-up display (HUD) capable of displaying forward-looking infrared (FLIR) imagery, intended to be used for instrument approaches under provisions of Title 14, Code of Federal Regulations (14 CFR) 91.175(l) and (m). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream Aerospace Corporation on April 22, 2016. We must receive your comments by June 6, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–7301 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2239; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream Aerospace Corporation applied for a type certificate for their new Model GVII–G500 series airplane. The Model GVII–G500 series airplane will be a business jet capable of accommodating up to 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage-mounted Pratt & Whitney turbofan engines.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 series airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model GVII–G500 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model GVII–G500 series airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Gulfstream Model GVII–G500 airplane will incorporate the following novel or unusual design feature:

An enhanced flight vision system (EFVS) that includes a head-up display (HUD) capable of displaying forward-looking infrared (FLIR) imagery, intended to be used for instrument approaches under provisions of § 91.175(l) and (m).

Discussion

The EFVS uses novel technology for which the FAA has no certification criteria. Furthermore, 14 CFR 25.773, which was not written in anticipation of such technology, does not permit visual distortions and reflections that could interfere with the pilot's compartment view. The video image potentially interferes with the pilot's ability to see the natural scene in the center of their forward field of view. Because § 25.773 does not provide for alternatives or considerations for such a novel system, it is necessary to establish safety requirements that assure an equivalent level of safety and effectiveness of the pilot compartment view as intended by this rule. These special conditions for the EFVS are prescribed under the provisions of § 21.16. Other applications for certification of such technology are anticipated in the near future, and magnify the need to establish FAA safety standards that can be applied consistently for all such approvals.

Unlike the pilot's natural forward vision, the EFVS image is infrared-based, monochrome, 2-dimensional (*i.e.*, providing no depth perception), and of lower resolution. While the pilot may be readily able to see around and through small individual stroke-written symbols on the HUD, the pilot may not be able to see around or through the image that fills the display without some interference of the outside view. Nevertheless, the EFVS may be capable of meeting an equivalent level of safety when considering the combined view of the image and the outside scene, which is visible to the pilot through the image. It is essential that the pilot be able to use this combination of image and natural view of the outside scene as safely and effectively as the pilot compartment view currently allows without the EFVS image.

These special conditions provide the unique pilot-compartment view requirements for the EFVS installation.

Compliance with these special conditions is required for the EFVS to be found acceptable, for the following intended functions, in accordance with § 91.175(l) and (m):

1. Presenting an image that would aid the pilot during a straight-in instrument approach.
2. Enable the pilot to determine the "enhanced flight visibility," as required by § 91.175(l)(2), for descent and operation below M_{DA}/D_H.
3. Enable the pilot to use the EFVS imagery to detect and identify the "visual references for the intended runway," required by § 91.175(l)(3), to continue the approach with vertical

guidance to 100 feet height above touchdown-zone elevation.

Note: The term "Enhanced Vision System," or EVS, commonly refers to a system comprising a HUD, imaging sensor(s), and avionics interface(s) that displays the sensor imagery on the HUD and overlays it with alpha-numeric and symbolic flight information. However, the term has also been used to refer to systems that display the sensor imagery, with or without other flight information, on a head-down display. Therefore, to avoid confusion, the FAA has defined the term "Enhanced Flight Vision System" (EFVS) to refer to certain EVS that meet the requirements of § 91.175(m), in particular the requirement for a HUD and specified flight information, and the ability to determine "enhanced flight visibility." Accordingly, an EFVS can be considered a subset of systems otherwise labeled EVS.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVII–G500 airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Model GVII–G500 airplanes.

1. Enhanced flight vision system (EFVS) imagery on the head-up display (HUD) must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot-compartment view, the EFVS device must meet the following requirements:

a. EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, "burlap" overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (*e.g.*, low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand, without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, wind-shear guidance, traffic collision avoidance system (TCAS) resolution advisories, and unusual-attitude recovery cues.

e. The EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (*i.e.*, conformal) to the external scene and, when considered singly or in combination, must not be misleading, cause pilot confusion, or increase workload. There may be airplane attitudes or cross-wind conditions which cause certain symbols, such as the zero-pitch line or flight-path vector, to reach field-of-view limits such that they cannot be positioned conformably with the image and external scene. In such cases, these symbols may be displayed, but with an altered appearance which makes the pilot aware that they are no longer displayed conformably (for example, "ghosting").

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot-compartment view must be not be degraded by the display of the EFVS image. Pilot tasks which must not be degraded by the EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on April 5, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–4279; Special Conditions No. 25–612–SC]

Special Conditions: Gulfstream Aerospace Corporation, Gulfstream GVI Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) GVI airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is non-rechargeable lithium batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective April 22, 2017.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in other makes and models of airplanes. We have determined to require special conditions for all applications requesting non-rechargeable lithium battery installations, except the installations excluded in the Applicability section, until the airworthiness requirements can be revised to address this issue. Applying special conditions to these installations across the range of all transport-airplane makes and models will ensure regulatory consistency among applicants.

These are the first special conditions the FAA has issued for non-rechargeable lithium battery installations on any airplane. The FAA has determined that these special conditions become effective 1 year after their publication in the **Federal Register** for reasons explained below in response to a public comment. The FAA intends for future special conditions for other makes and models to be effective on this same date or 30 days after their publication, whichever is later.

Background

Gulfstream applied for several changes to type certificate no. T00015AT to install non-rechargeable lithium batteries in the Model GVI airplane. The Gulfstream Model GVI airplane is a twin-engine, transport-category airplane with a maximum passenger capacity of 19 and maximum takeoff weight of 99,600 pounds.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the design change and areas affected by the change continue to meet the applicable provisions of the regulations listed in type certificate no. T00015AT, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the "original type certification basis." The regulations listed in type certificate no. T00015AT are 14 CFR part 25 effective February 1, 1965, including Amendments 25–1 through 25–120, 25–122, 25–124, and 25–132. The certification basis also includes certain special conditions, exemptions, and equivalent-safety findings that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVI airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVI airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the Gulfstream Model GVI airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Gulfstream Model GVI airplane will incorporate non-rechargeable lithium batteries.

A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery, and venting capability where necessary. For the purpose of these special conditions, we refer to a battery and battery system as a battery.

Discussion

The FAA derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. This re-codification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (b)(4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy-storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery, in an emergency-locator-transmitter installation, demonstrated unanticipated failure modes. The United Kingdom's Air Accidents

Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global-positioning systems, cockpit voice recorders, flight-data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication-management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency-locator transmitters, life rafts, escape slides, seatbelt air bags, cabin-management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video-surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- Internal failures: In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.
- Fast or imbalanced discharging: Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.
- Flammability: Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special condition nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special condition nos. 3, 7, and 8 are self-explanatory; the FAA does not provide further explanation for them at this time.

The FAA requires special condition no. 4 to make it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable-fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires each non-rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape.

Special condition no. 5 addresses corrosive fluids and gases, whereas special condition no. 6 addresses heat. Special condition no. 6 requires each non-rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting these special conditions may be the same, but they are independent requirements addressing different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113. Sections 25.1353(b)(1) through (b)(4) at Amendment 25–113 remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–15–09–SC, for the Gulfstream GVI airplane, was published in the **Federal Register** on November 20, 2015 (80 FR 72618). Five commenters provided comments.

The Aerospace Industries Association (AIA) recommended revising proposed special condition no. 1 to read (see italics), ". . . each non-rechargeable lithium battery installation must maintain safe cell temperatures and pressure under all foreseeable operating conditions to prevent fire and explosion *by validating that the performance of non-rechargeable lithium cells selected for use are acceptable with regards to the operating environment.*" AIA stated that this revision helps clarify the term "foreseeable operating conditions" as "airplane operating and environmental conditions over which proper functioning of the equipment, systems, and installations is required to be considered includes the full normal operating envelope of the airplane as defined by the Airplane Flight Manual together with any modification to that envelope associated with abnormal or emergency procedures." AIA referenced FAA Advisory Circular (AC) 25.1309–1A and AC 25–11A to support this definition. The FAA does not agree with the proposal. The FAA intends for the term "foreseeable operating conditions" in these special conditions to not only apply at the airplane level but also at the battery-cell level. Therefore, we have not incorporated this proposed revision into the special condition.

AIA recommended revising proposed special condition no. 2 to read, ". . . each non-rechargeable lithium battery installation must prevent the occurrence of self-sustaining, uncontrolled increases in temperature or pressure *which would preclude continued safe flight and landing.*" AIA states that this change allows the use of airplane-level mitigation or design change to appropriately address the hazard. The FAA does not agree with the proposal. The FAA has determined that these special conditions are intended to require the battery, which includes its installation provisions, to be designed to prevent uncontrollable failure, and to not rely only on mitigation of a battery failure at the airplane level. Therefore, we have not revised proposed special condition no. 2.

AIA recommended revising proposed special condition no. 3 to read, ". . . each non-rechargeable lithium battery installation must not emit explosive or toxic gases in normal operation, or as a result of *any failure which is not shown to be extremely remote . . .*" The FAA does not agree with the proposal to exclude extremely remote failures. To ensure that all failures that are not extremely improbable are properly anticipated and accounted for, we have not revised proposed special condition no. 3 to include the proposed words. Note that service history currently shows that battery failure is more frequent than extremely remote.

AIA recommended deleting proposed special condition no. 4. AIA stated that it does not introduce a new airworthiness requirement and that it seems more appropriate to clarify applicability of an existing airworthiness requirement via policy. The FAA does not agree with the proposal. Section 25.863 historically has been applied to flammable fluids related to propulsion and hydraulic systems. The FAA has not issued guidance material at this time that would ensure a proper understanding that this section also applies to non-rechargeable lithium battery installations, which contain flammable fluid. We have determined to not delete proposed special condition no. 4.

AIA recommended revising proposed special condition no. 5 to read, ". . . each non-rechargeable lithium battery installation must not *allow escape of corrosive fluids or gases that may* damage surrounding structure or any adjacent systems, equipment, or electrical wiring *of the aircraft in such a way as to cause a hazardous or catastrophic failure condition.*" The FAA agrees with the comment in that the special condition requires clarification. The FAA intends for special condition no. 5 to be consistent with § 25.1309. So, we added the words ". . . in such a way as to cause a major or more-severe failure condition." The revised special condition now reads, ". . . each non-rechargeable lithium battery installation must not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition." The FAA does not concur with excluding major failure conditions, nor limiting the types of failure conditions as proposed.

AIA recommended revising proposed special condition no. 6 to read, ". . . each non-rechargeable lithium battery installation must have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of *a single cell within a battery pack, which precludes continued safe flight and landing.*" AIA stated that they believe the intent of this special condition is to show that the battery design can tolerate a failure of a single cell. The FAA does not concur with AIA's recommendation. We intend for special condition no. 6 to require consideration of the maximum heat the battery can generate if it fails (that is, not just the heat from one cell for multi-cell batteries), including the heat generated from thermal runaway propagating from one cell to the other cells. AIA's proposed wording could be interpreted as only requiring consideration of the heat generated from a single cell. AIA also stated that design mitigation or analysis at the airplane level may be applied to show the design to be compliant. This comment addresses how to show compliance with the special condition and would not change the special condition. This comment can be addressed during the type certification projects.

AIA recommended deleting proposed special condition no. 7, which reads, ". . . each non-rechargeable lithium battery installation must be capable of automatically controlling the discharge rate of each cell to prevent cell imbalance, back-charging, overheating, and uncontrollable temperature and pressure." AIA stated that the hazard intended to be addressed by this special condition would be prevented by meeting special condition nos. 1, 2, 4 and 5. The intent of proposed special condition no. 7 was to also address charge imbalance because an in-service event demonstrated that a charge imbalance is one of many failure modes that can lead to a thermal runaway condition. However, the FAA agrees with deleting proposed special condition no. 7 because compliance with special condition nos. 1 and 2 accomplish the safety objectives of proposed special condition no. 7.

AIA recommended deleting proposed special condition no. 8, which reads, ". . . each non-rechargeable lithium battery installation must have a means to automatically disconnect from its discharging circuit in the event of an over-temperature condition, cell failure, or battery failure." The FAA agrees with deleting this proposed special condition because doing so does not relieve applicants from the need to comply with § 25.1309. In addition to § 25.1309, all applicable system-level requirements may require the connected system to automatically disconnect from the battery discharging circuit in the event of an over-temperature condition, cell failure, or battery failure.

AIA recommended revising proposed special condition no. 9 (which is now special condition no. 7 in these special conditions) to read, ". . . each non-rechargeable lithium battery installation must have a failure sensing and warning system to alert the flightcrew if its failure affects *precludes continued* safe *flight and landing* of the airplane." AIA stated that this proposed special condition repeats the criteria defined in § 25.1309, and therefore is a duplication of current Federal aviation requirements. Proposed special condition no. 9 has the same purpose as that of § 25.1309(c), which is to require flightcrew alerting if failure of a battery installation, in itself or in relation to a system that performs an airplane-level function, could result in "unsafe system operating conditions" as stated in § 25.1309(c). The FAA's intent for this special condition is to emphasize this requirement specifically for non-rechargeable lithium battery installations. We do not concur with AIA's recommendation because the revised wording does not fully address the "unsafe system operating conditions" as required in § 25.1309(c).

AIA recommended revising proposed special condition no. 10 (which is now special condition no. 8 in these special conditions) to read, ". . . each non-rechargeable lithium battery installation must have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for *continued* safe *flight and landing* of the airplane." AIA stated that this proposed special condition repeats the criteria defined in § 25.1309, and therefore is a duplication of current Federal aviation requirements. For similar reasons given in our response to the AIA comment on proposed special condition no. 9, we do not concur with AIA's recommendation. The FAA's intent for this special condition is to emphasize this requirement specifically for non-rechargeable lithium battery installations. We do not concur with AIA's recommendation because the revised wording does not fully address the "unsafe system operating conditions" as required in § 25.1309(c).

The Boeing Company commented that they concur with AIA's comments.

The Boeing Company also requested that the FAA provide adequate time before non-rechargeable lithium battery special conditions become effective, to support validation activities by foreign civil airworthiness authorities (FCAA) and to not adversely impact future airplane deliveries by all applicants. The Boeing Company stated that they have been "informed by FCAAs that validation activities for FAA type certificate data sheet certification basis changes can take up to 12 months after receipt of application." The FAA agrees that adequate time is necessary to allow Gulfstream, and other applicants for which similar special conditions will be issued, to coordinate with FCAAs, and to conduct other activities associated with implementing these special conditions, which have not been required for previous approvals. These are the first special conditions the FAA has issued for a non-rechargeable lithium battery installation on any airplane. Likewise, we have determined that an effective date of one year after special conditions publication is appropriate. The FAA also has been coordinating with other applicants to develop proposed special conditions for their projects involving non-rechargeable lithium batteries. The FAA intends for future special conditions, for other airplane makes and models, to be effective on this same date or 30 days after their publication, whichever is later.

The Boeing Company commented that ". . . these special conditions should clearly indicate the scope of changes for which the certification basis is deemed inadequate and requires application of the special conditions." The Boeing Company made this comment in regards to the applicability of these special conditions to batteries that have less than 2 watt-hours of energy and meet Underwriters Laboratories (UL) 1642 or UL 2054. The FAA has determined that the use of UL 1642 and UL 2054 should be addressed as a method-of-compliance issue rather than exclusion criteria for certain battery sizes. These special conditions are to apply to all non-rechargeable lithium batteries regardless of their size. These special conditions require this where it states ". . . each non-rechargeable lithium battery installation must . . ."

Airbus commented that they assume that the FAA considers the standards in Radio Technical Commission for Aeronautics (RTCA) DO–227, *Minimum Operational Performance Standard for Lithium Batteries,* to be an acceptable means of compliance with the special conditions that address battery-qualification aspects. Airbus also commented that they assume that compliance with the other special conditions is demonstrated through analysis of battery integration in the airplane physical and functional environment. These comments address how to show compliance with the special conditions and would not change the special conditions. These comments can be addressed during the type certification projects.

Airbus commented that batteries that are Category I, as defined in RTCA DO–227, should be excluded from proposed special condition nos. 1 through 8 (which are special condition nos. 1 through 6 in these special conditions). RTCA DO–227 defines these batteries as "solid-cathode cells that contain less than 0.15 grams of lithium or lithium alloy, and batteries that use not more than four such cells." The FAA does not concur. These special conditions are intended to provide an appropriate level of safety for all non-rechargeable lithium battery installations.

Bombardier provided the following comment on proposed special condition no. 3: "The quantity of [lithium battery] gas that will constitute a hazard is difficult to define and test. An outgassing limit in corresponding to cell size/number would be easier to comply with and test. This should only apply in the failure case, as in normal cell operation non-rechargeable [lithium batteries] are expected to remain sealed. We recommend wording that would instead limit cell size/number and require cell isolation to minimize hazard to airplane and occupant in case of failure and be sealed in normal operation. Exposure to occupants may be achieved by locating battery installations away from occupant areas on the airplane." The FAA does not agree with the proposal. The FAA considers that a special condition that limits the number of cells and their size would be unnecessarily restrictive. Note that this special condition does not require applicants to determine the quantity of gas that would constitute a hazard. For example, an acceptable means of complying with this special condition is to demonstrate, through tests, that all emitted gasses are contained or vented overboard through designed ports. However, this special condition does allow explosive and toxic gases to be uncontained and not vented overboard if they do not accumulate in hazardous quantities within the airplane.

Bombardier commented that a design that prevents fluids and gases from escaping the installation should be an acceptable means of complying with proposed special condition no. 5. Bombardier recommended addressing the need for fluid containment. These comments address how to show compliance with the special conditions and would not change the special conditions. These comments can be addressed during the type certification projects.

Transport Canada recommended revising proposed special condition no. 1 to address "all hazards." We have not revised this special condition because it is intended to address only the cell-level hazards, which are fire and explosion. All hazards are addressed through compliance with the complete set of applicable special conditions.

Transport Canada recommended adding a sentence to proposed special condition no. 2 that reads, "*Batteries that are capable of venting toxic gases shall not be installed or used in the aircraft cockpit.*" Transport Canada stated that adding this sentence would harmonize the special condition with Technical Standard Order (TSO) TSO–C142a, *Non-Rechargeable Lithium Cells and Batteries,* and RTCA DO–227, *Minimum Operational Performance Standard for Lithium Batteries.* The FAA does not agree with the proposal and did not add this sentence to special condition no. 2. We consider the special condition without this sentence more appropriate because it allows an applicant to demonstrate that the amount of gases a battery vents is not a hazard to the flight deck, and allows installation of those batteries.

Transport Canada recommended revising proposed special condition no. 5 to read, ". . . each non-rechargeable lithium battery installation must not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape *in such a way as to cause a major or more severe failure condition.*" The FAA concurs, and has incorporated the recommended wording into special condition no. 5. We explain our agreement with adding these words in our above response to AIA's comment on this special condition.

Transport Canada recommended revising proposed special condition no. 6 to refer to "essential systems" instead of "systems," because the FAA previously found that wording acceptable for rechargeable lithium battery special conditions. Alternatively, Transport Canada recommended that the FAA be consistent and use "systems" for both rechargeable and non-rechargeable lithium battery special conditions in the future. The intent of this special condition is to address the hazards to the airplane regardless of the system critically. The FAA agrees with using "systems" in this special condition and in the next special conditions we propose for a rechargeable lithium battery installation.

Transport Canada recommended revising proposed special condition no. 6 to read, ". . .each non-rechargeable lithium battery installation must have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any *discharge condition and/or* failure of it or its individual cells." The FAA does not agree with the proposal. The maximum heat generated due to any battery or cell failure (for example, the heat generated during thermal runaway) represents the worst-case condition. The maximum heat generated during "any discharge condition" will not exceed this worst-case condition. Therefore, the FAA did not revise this special condition.

Transport Canada recommended including "unbalanced discharge" in the list of conditions intended to be prevented in proposed special condition no. 7. As a result of a comment from AIA addressed above, the FAA deleted proposed special condition no. 7 because compliance with special condition nos. 1 and 2 accomplish its safety objectives. Special conditions 1 and 2 also address unbalanced discharge.

Transport Canada recommended revising proposed special condition no. 8 to read, ". . . each non-rechargeable lithium battery installation must have a means to automatically *and permanently* disconnect from its discharging circuit in the event of an over-temperature condition, *over-current condition,* cell failure, or battery failure." Transport Canada recommended this change to raise awareness of issues associated with positive temperature coefficient protective devices in lithium battery design. As discussed above in response to an AIA comment, the FAA deleted proposed special condition no. 8, and therefore, has not incorporated the recommended revision.

Transport Canada recommended adding a special condition to require instructions for continued airworthiness (ICAs) to address handling and storage of non-rechargeable lithium batteries at a minimum. The FAA has not added the recommended special condition because § 25.1529 requires ICAs for non-rechargeable lithium battery installations. To ensure compliance with § 25.1529, the FAA is documenting acceptable methods of compliance with § 25.1529 for non-rechargeable lithium battery installations as part of the certification process. These methods of compliance address the issues Transport Canada raised. The FAA previously included a special condition that requires compliance with § 25.1529 in rechargeable lithium battery special conditions. For consistency and the above-stated reasons, the FAA plans to no longer include that special condition in special conditions applicable to rechargeable lithium batteries.

Transport Canada recommended "the special condition be written in such a way as to drive the requirement for original equipment manufacturers to complete an adequate failure modes and effects analysis (FMEA) in order to discover and mitigate for all failure modes, including those that are less well known." The FAA does not agree with the proposal. The current FAA AC 25.1309–1A and Aviation Rulemaking Advisory Committee (ARAC) recommended AC 25.1309–Arsenal contain guidance to utilize FMEA in the safety-assessment process. The FAA believes that these special conditions, and the hazards identified, drive the FMEA or any other system-safety assessment tool to comprehensively assess the risk of battery failures. We believe that we have accomplished Transport Canada's recommendation.

Transport Canada recommended changes to FAA TSO–142a, *Non-Rechargeable Lithium Cells and Batteries.* Their comment did not recommend changes to these special conditions; as such, this comment does not affect these special conditions.

Transport Canada recommended adding a special condition that reads, "*Equipment manufacturers intending to use lithium-metal batteries in aircraft equipment must demonstrate that the battery design incorporates an acceptable level of circuit protection to mitigate against known failure modes including, but not limited to, external short-circuits and unbalanced discharge.*" Transport Canada referenced Air Accidents Investigation Branch (AAIB) Safety Recommendation 2015–016 to support this recommendation, which states, *"It is recommended that the Federal Aviation Administration, in conjunction with the European Aviation Safety Agency and Transport Canada, require equipment manufacturers intending to use lithium-metal batteries in aircraft equipment to demonstrate that the battery design incorporates an acceptable level of circuit protection to mitigate against known failure modes including, but not limited to, external short-circuits and unbalanced discharge."* The FAA does not concur with adding this special condition. The AAIB wrote their recommendation based on a non-rechargeable lithium battery installation that was approved before the FAA determined the need to apply special conditions. Their recommendation is specific to incorporating circuit protection, which is a means to achieve the safety level defined in these special conditions. The FAA intends for these special conditions to be performance-based. Additionally, type certificate and supplemental type certificate applicants, and not the equipment manufacturers who have not applied for the installation approval, are required to demonstrate compliance to applicable special conditions.

The FAA has determined that "uncontrolled" in special condition no. 2 should be "uncontrollable" to more accurately describe the concern. This revision does not change the intended meaning of this special condition.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVI airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after its effective date. The existing airplane fleet and follow-on deliveries of airplanes with previously certified non-rechargeable lithium battery installations are not affected.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or relocating the installation to improve the safety of the airplane and occupants. The FAA determined that this exclusion is in the public interest because the need to meet all of the special conditions might otherwise deter design changes that solely involve relocating batteries to improve safety. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the following special conditions are part of the type certification basis for Gulfstream Model GVI airplanes.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113, each non-rechargeable lithium battery installation must:

1. Maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.
8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note 1: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a "battery" and "battery system" are referred to as a battery.

Issued in Renton, Washington, on April 14, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09311 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–4819; Special Conditions No. 25–615–SC]

Special Conditions: Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 Airplanes; Airplane Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes will have a digital-systems network architecture composed of several connected networks that may allow access to or by external computer systems and networks, and may result in airplane systems-security vulnerabilities. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Bombardier Inc. on April 22, 2016. We must receive your comments by June 6, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–4819 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On June 13, 2012, Bombardier Inc. applied for an amended type certificate for their new Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes are derivatives of the Model BD–700 series of airplanes, and are marketed as the Bombardier Global 7000 and Global 8000, respectively. These airplanes are ultra-long-range, executive-interior business jets.

The Model BD–700–2A12 and BD–700–2A13 airplanes have a maximum certified passenger capacity of 19, and include new high-speed transonic wings with improved aerodynamic efficiency and a pressurized cabin for luxury interiors.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bombardier Inc. must show that the Model BD–700–2A12 and BD–700–2A13 airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–137.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model BD–700–2A12 and BD–700–2A13 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–700–2A12 and BD–700–2A13 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model BD–700–2A12 and BD–700–2A13 airplanes will incorporate the following novel or unusual design feature: A digital-systems network architecture composed of several connected networks. This network architecture and network configuration will have the capability to allow access to or by external network sources, and may be used for or interfaced with a diverse set of functions, including:

- Flight-safety-related control, communication, and navigation systems (airplane-control domain);
- Operator business and administrative support (operator-information domain); and
- Passenger information and entertainment systems (passenger-entertainment domain).

Discussion

The Model BD–700–2A12 and BD–700–2A13 airplanes' digital-systems network architecture is novel or unusual for commercial transport airplanes as it allows connection to airplane electronic systems and networks, and access from sources external to the airplane (*e.g.,* operator networks, wireless devices, Internet connectivity, service-provider satellite communications, electronic flight bags, etc.) to the previously isolated airplane electronic assets. Airplane electronic assets include electronic equipment and systems, instruments, networks, servers, software and electronic components, field-loadable software and hardware applications, databases, etc. This proposed design may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the safety, operation, and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of digital-system network architectures, nor access to airplane systems. Furthermore, 14 CFR part 25 regulations, and current system-safety assessment policy and techniques, do not address potential security vulnerabilities by unauthorized access to airplane data busses and servers. Therefore, these special conditions are issued to ensure that the security, integrity, and availability of airplane systems are not compromised by certain wired or wireless electronic connections between airplane data busses and networks.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model BD–700–2A12 and BD–700–2A13 airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for electronic system-security protection from unauthorized external access on Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 airplanes.

1. The applicant must ensure that the airplane electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system-security threats are identified and assessed, and that effective electronic system-security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system-security safeguards.

Issued in Renton, Washington, on April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09336 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–4238; Special Conditions No. 25–613–SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII–G500 Airplanes; Airplane Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVII–G500 airplane. These airplanes will

have a digital-systems network architecture composed of several connected networks that may allow access to or by external computer systems and networks, and may result in airplane electronic system-security vulnerabilities. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream Aerospace Corporation on April 22, 2016. We must receive your comments by June 6, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–4238 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream Aerospace Corporation applied for a type certificate for their new Model GVII–G500 airplane.

The Model GVII–G500 airplane will be a business jet capable of accommodating up to 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage-mounted Pratt & Whitney turbofan engines.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–137.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model GVII–G500 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model GVII–G500 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17.

Novel or Unusual Design Features

The Model GVII–G500 airplane will incorporate the following novel or unusual design feature: A digital-systems network architecture composed of several connected networks. This network architecture and network configuration will have the capability to allow access to or by external network sources, and may be used for or interfaced with a diverse set of functions, including:

- Flight-safety-related control, communication, and navigation systems (airplane-control domain);
- Operator business and administrative support (operator-information domain); and
- Passenger information and entertainment systems (passenger-entertainment domain).

Discussion

The Model GVII–G500 airplane's digital-systems network architecture is novel or unusual for commercial transport airplanes as it allows connection to airplane electronic systems and networks, and access from sources external to the airplane (*e.g.,* operator networks, wireless devices, Internet connectivity, service-provider satellite communications, electronic flight bags, etc.) to the previously isolated airplane electronic assets. Airplane electronic assets include electronic equipment and systems, instruments, networks, servers, software and electronic components, field-loadable software and hardware applications, databases, etc. This proposed design may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the safety, operation, and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of digital-system architectures, nor access to airplane systems. Furthermore, 14 CFR part 25, and current system-safety assessment policy and techniques, do not address potential security vulnerabilities by unauthorized access to airplane data busses and servers. Therefore, these special conditions are issued to ensure that the security, integrity, and availability of airplane systems are not compromised by certain wired or wireless electronic connections between airplane data busses and networks.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model GVII–G500 airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for electronic system-security protection from unauthorized external access on the Gulfstream Aerospace Corporation Model GVII–G500 airplane.

1. The applicant must ensure that the airplane electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.
2. The applicant must ensure that electronic system-security threats are identified and assessed, and that effective electronic system-security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.
3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system-security safeguards.

Issued in Renton, Washington, on April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09335 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5592; Directorate Identifier 2016–NM–040–AD; Amendment 39–18488; AD 2016–08–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for The Boeing Company Model 787–8 and 787–9 airplanes powered by General Electric (GE) GEnx–1B engines. This AD requires revising the airplane flight manual (AFM) to provide the flight crew a revised fan ice removal procedure and a new associated mandatory flight crew briefing to reduce the likelihood of engine damage due to fan ice shedding. This AD also removes certain dispatch relief. For airplanes with certain engines, this AD also requires reworking or replacing at least one engine. This AD was prompted by a recent engine fan blade rub event that caused an in-flight non-restartable power loss. We are issuing this AD to prevent susceptibility to heavy fan blade rubs, which could result in engine damage and a possible in-flight non-restartable power loss of one or both engines.

DATES: This AD is effective May 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 18, 2016 (81 FR 14704, March 18, 2016).

We must receive comments on this AD by June 6, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5592.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5592; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *Suzanne.Lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 14, 2016, we issued AD 2016–06–08, Amendment 39–18439 (81 FR 14704, March 18, 2016) (''AD 2016–06–08''), for Boeing Model 787–8 and 787–9 airplanes powered by GE GEnx engines. AD 2016–06–08 was prompted by a report of a significant fan rub event involving a GEnx–1B Performance Improvement Program (PIP) 2 engine, apparently caused by partial fan ice shedding and a resulting fan imbalance that in turn caused substantial damage to the engine and an in-flight non-restartable power loss. GEnx–1B PIP1 engines have model designators GEnx–1B( )/P1. GEnx–1B PIP2 engines have model designators GEnx–1B( )/P2.

We continue to investigate this issue with Boeing and GE; however, the engine damage appears to be a result of susceptibility to heavy fan blade rubs common to the GEnx–1B PIP2 engine. The other engine on the event airplane was an older design GEnx–1B PIP1 configuration that incurred expected wear and minor damage during the icing event and continued to operate normally. The event occurred in icing conditions at an altitude of 20,000 feet.

The urgency of this issue stems from the safety concern over continued safe flight and landing for airplanes that are powered by two GEnx–1B PIP2 engines operating in a similar environment to the event airplane. In this case both GEnx–1B PIP2 engines may be similarly damaged and unable to be restarted in flight. The potential for common cause failure of both engines in flight is an urgent safety issue.

AD 2016–06–08 requires revising the airplane flight manual (AFM) to provide the flight crew a new fan ice removal procedure to reduce the likelihood of engine damage due to fan ice shedding. AD 2016–06–08 also requires, for certain airplanes, reworking the fan stator module assembly on GEnx–1B PIP2 engines.

Susceptibility to heavy fan blade rubs, if not corrected, could result in engine damage and a possible in-flight non-restartable power loss of one or both engines. We are issuing this AD to correct the unsafe condition on these products.

The preamble to AD 2016–06–08 explains that we regard the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this AD follows from that determination.

Related Service Information Under 1 CFR Part 51

We reviewed GE GEnx–1B Service Bulletins 72–0309 R00, dated March 11, 2016; and 72–0314 R00, dated April 1, 2016. The service information describes procedures for reworking the fan stator module assembly on GEnx–1B PIP2 engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires revising the AFM to provide the flight crew a revised fan ice removal procedure and a new associated mandatory flight crew briefing to reduce the likelihood of engine damage due to fan ice shedding. This AD also removes certain dispatch relief. For an airplane with two GEnx–1B PIP2 engines having specified model and part numbers, this AD also requires reworking or replacing at least one engine.

Interim Action

We consider this AD interim action. This action addresses rework of a single engine on any airplane that has two GEnx–1B PIP2 engines having certain model and part numbers. We may consider issuing further rulemaking to require rework of the remainder of the GEnx–1B PIP2 engines in this fleet.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because susceptibility to heavy fan blade rubs could result in engine damage and a possible in-flight non-restartable power loss of one or both engines. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Explanation of Compliance Times

The FAA has evaluated the safety risk associated with this condition and has determined that in the interest of safety it is necessary to mandate three actions:

- Revise the Boeing Model 787 AFM to provide the flight crew a revised fan ice removal procedure and a new daily flight crew briefing on the existing engine ice shed procedure. The compliance time is 7 days.
- Removes certain dispatch relief, effective within 7 days.
- Rework or replacement of at least one engine, for airplanes with two GEnx–1B PIP2 engines. The compliance time is about 150 calendar days after issuance of this AD. Boeing and the engine manufacturer, GE, have developed a maintenance plan to support this compliance schedule.

The FAA has determined that allowing for notice and public comment through a notice of proposed rulemaking (NPRM) prior to mandating these actions is neither practicable nor in the public interest.

Recognizing the urgency of this safety issue, this AD represents a compressed schedule to rework a large number of airplanes located around the world. Both specialized tooling and trained personnel are required on-site to perform the rework at various maintenance facilities around the world. To complete the work, 29 airlines will need to reallocate 176 airplanes from revenue service to maintenance in order to conduct the (on-wing) rework. The FAA has determined that 150 days is the minimum time to rework one engine per airplane on the entire fleet.

Issuing an NPRM would require time to allow for public comment, and time for the FAA to consider and respond to those comments. As a result, the time allowed for the operators to perform the engine rework would be significantly reduced from 150 days, owing to the time that elapsed during the notice and comment period.

As a result, the considerable reduction in allowable compliance time would require operators to perform the rework significantly out of sequence with the maintenance schedule plan. In some cases, airplanes could be grounded. Thus, the reduced compliance time could substantially disrupt certain operators. The FAA considers that this is neither practicable nor in the public interest.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2016–5592 and Directorate Identifier 2016–NM–040–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 43 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revisions	1 work-hour × $85 per hour = $85	$0	$85	$3,655
Rework	40 work-hours × $85 per hour = $3,400	0	3,400	146,200

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–12 The Boeing Company: Amendment 39–18488; Docket No. FAA–2016–5592; Directorate Identifier 2016–NM–040–AD.

(a) Effective Date

This AD is effective May 9, 2016.

(b) Affected ADs

This AD affects AD 2016–06–08, Amendment 39–18439 (81 FR 14704, March 18, 2016) ("AD 2016–06–08").

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, powered by General Electric (GE) GEnx–1B engines.

(d) Subject

Air Transport Association (ATA) of America Code 72, engines.

(e) Unsafe Condition

This AD was prompted by a recent engine fan blade rub event that caused an in-flight non-restartable power loss. We are issuing this AD to prevent susceptibility to heavy fan blade rubs, which could result in engine damage and a possible in-flight non-restartable power loss of one or both engines.

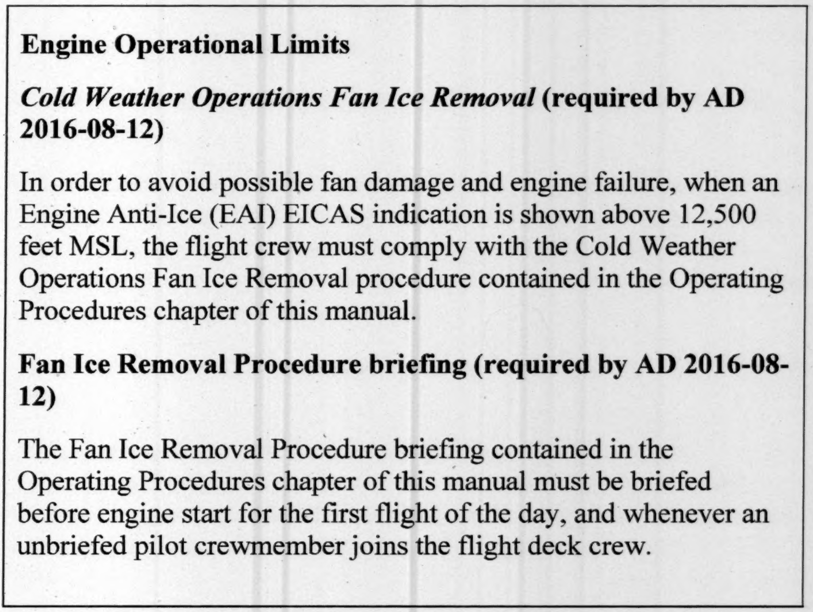
(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual (AFM) Revision: Certificate Limitations

Within 7 days after the effective date of this AD, revise the Certificate Limitations chapter of the applicable Boeing 787 AFM to include the statement provided in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD into the AFM. Once accomplished, the AFM revision required by this paragraph terminates the requirements of paragraph (g) of AD 2016–06–08, and the AFM revision required by paragraph (g) of AD 2016–06–08 must be removed from the AFM.

Figure 1 to Paragraph (g) of this AD



Engine Operational Limits

Cold Weather Operations Fan Ice Removal **(required by AD 2016-08-12)**

In order to avoid possible fan damage and engine failure, when an Engine Anti-Ice (EAI) EICAS indication is shown above 12,500 feet MSL, the flight crew must comply with the Cold Weather Operations Fan Ice Removal procedure contained in the Operating Procedures chapter of this manual.

Fan Ice Removal Procedure briefing (required by AD 2016-08-12)

The Fan Ice Removal Procedure briefing contained in the Operating Procedures chapter of this manual must be briefed before engine start for the first flight of the day, and whenever an unbriefed pilot crewmember joins the flight deck crew.

(h) AFM Revision: Operating Procedures

Within 7 days after the effective date of this AD, revise the Operating Procedures chapter of the Boeing 787 AFM to include the statement provided in figure 2 to paragraph (h) of this AD. This may be done by inserting a copy of this AD into the AFM. Once accomplished, the AFM revision required by this AD terminates the requirements of paragraph (h) of AD 2016–06–08, and the AFM revision required by paragraph (h) of AD 2016–06–08 must be removed from the AFM.

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ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revisions	1 work-hour × $85 per hour = $85	$0	$85	$3,655
Rework	40 work-hours × $85 per hour = $3,400	0	3,400	146,200

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–12 The Boeing Company: Amendment 39–18488; Docket No. FAA–2016–5592; Directorate Identifier 2016–NM–040–AD.

(a) Effective Date

This AD is effective May 9, 2016.

(b) Affected ADs

This AD affects AD 2016–06–08, Amendment 39–18439 (81 FR 14704, March 18, 2016) ("AD 2016–06–08").

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, powered by General Electric (GE) GEnx–1B engines.

(d) Subject

Air Transport Association (ATA) of America Code 72, engines.

(e) Unsafe Condition

This AD was prompted by a recent engine fan blade rub event that caused an in-flight non-restartable power loss. We are issuing this AD to prevent susceptibility to heavy fan blade rubs, which could result in engine damage and a possible in-flight non-restartable power loss of one or both engines.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual (AFM) Revision: Certificate Limitations

Within 7 days after the effective date of this AD, revise the Certificate Limitations chapter of the applicable Boeing 787 AFM to include the statement provided in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD into the AFM. Once accomplished, the AFM revision required by this paragraph terminates the requirements of paragraph (g) of AD 2016–06–08, and the AFM revision required by paragraph (g) of AD 2016–06–08 must be removed from the AFM.

Procedures chapter of this manual.

Fan Ice Removal Procedure briefing (required by AD 2016-08-12)

The Fan Ice Removal Procedure briefing contained in the Operating Procedures chapter of this manual must be briefed before engine start for the first flight of the day, and whenever an unbriefed pilot crewmember joins the flight deck crew.

(h) AFM Revision: Operating Procedures

Within 7 days after the effective date of this AD, revise the Operating Procedures chapter of the Boeing 787 AFM to include the statement provided in figure 2 to paragraph (h) of this AD. This may be done by inserting a copy of this AD into the AFM. Once accomplished, the AFM revision required by this AD terminates the requirements of paragraph (h) of AD 2016–06–08, and the AFM revision required by paragraph (h) of AD 2016–06–08 must be removed from the AFM.

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Figure 2 to Paragraph (h) of this AD

Cold Weather Operations –
Fan Ice Removal Procedure (required by AD 2016-08-12)

This procedure is required when in icing conditions above 12,500 feet MSL by the Engine Operational Limits Cold Weather Operations Fan Ice Removal limitation contained in the Certificate Limitations chapter of this manual. The language below shall not be modified.

When an EAI EICAS indication is shown with N1 settings below 85%, or when fan icing is suspected due to high engine vibration, the fan blades must be cleared of any ice. Do the following procedure every 5 minutes on both engines, one engine at a time: Increase to a minimum of 85% N1 momentarily, then resume normal operation.

Fan Ice Removal Procedure briefing (required by AD 2016-08-12)

The following briefing is important to ensure the flightcrew understands the importance of complying with the revised Fan Ice Removal procedure. This is also necessary to remind the crew that they will need to monitor, and react to an indication not normally used for any crew action but now requires timely, mandatory crew actions.

The briefing must include the following items:

- Whenever airborne above 12,500 feet MSL and either or both Engine Anti Ice (EAI) EICAS indication show and N1 is below 85%:
  1. Immediately start a timer.
  2. At 5-minute intervals accelerate each engine to at least 85% N1 momentarily, one engine at a time.
  3. Continue this procedure as long as the EAI indication remains shown.
  4. If EAI indicator(s) blank before the 5-minute interval, perform a fan ice clearance procedure per step 2 above, then resume normal operation.
- Perform the "Fan Ice Removal" procedure any time fan ice is suspected due to high engine vibrations.

BILLING CODE 4910–13–C

(i) Removal of Certain Dispatch Relief

As of 7 days after the effective date of this dispatch of an airplane is prohibited unless the equipment specified in paragraph (i)(1) and (i)(2) is operational.

(1) At least one Engine Anti-Ice (EAI)

(j) Engine Rework or Replacement

For an airplane powered by two engines having any model number GEnx–1B64/P2, assembly part number 2447M10G01 or 2447M10G02: Before October 1, 2016, do the actions specified by paragraph (j)(1) or (j)(2) of this AD.

(1) Rework at least one engine in accordance with paragraph 3.B. or 3.C. of the Accomplishment Instructions of GE GEnx–1B Service Bulletin 72–0309 R00, dated March 11, 2016; or paragraph 3.B. or 3.C. of the Accomplishment Instructions of GE GEnx–1B Service Bulletin 72–0314 R00, dated April 1, 2016. Although GE GEnx Service Bulletins GEnx–1B 72–0314 R00, dated April 1, 2016; and GEnx–1B 72–0309 R00, dated March 11, 2016; specify submitting certain tip clearance measurements to GE, no report is required by this AD.

(2) Remove at least one engine and replace with an engine that is eligible for installation that is not identified in the introductory text to paragraph (j) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *Suzanne.Lucier@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on May 9, 2016.

(i) GE GEnx–1B Service Bulletin 72–0314

(4) The following service information was approved for IBR on March 18, 2016 (81 FR 14704, March 18, 2016).

(i) GE GEnx–1B Service Bulletin 72–0309 R00, dated March 11, 2016.

(ii) Reserved.

(5) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 7, 2016.

Ann C. Mollica,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

Issued in Renton, Washington, on April 12, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09000 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2965; Directorate Identifier 2014–NM–227–AD; Amendment 39–18487; AD 2016–08–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2012–17–13, which applied to certain The Boeing Company Model 707 airplanes, and Model 720 and 720B series airplanes. For certain airplanes, AD 2012–17–13 required using redefined flight cycle counts; determining the type of material of the horizontal stabilizer, rear spar, and upper and lower chords on the inboard and outboard ends of the rear spar; repetitively inspecting for cracking of the horizontal stabilizer components; and repairing or replacing the chord, or airplanes, AD 2012–17–13 required inspecting certain structurally significant items, and repairing discrepancies if necessary. This new AD adds a requirement to replace all chord segments made of 7079 aluminum with new, improved chord segments made of 7075 aluminum. This AD was prompted by a determination that all chord segments made of 7079 aluminum must be replaced with new, improved chord segments made of 7075 aluminum. We are issuing this AD to detect and correct stress corrosion and potential early fatigue cracking in the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer.

DATES: This AD is effective May 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 16, 2012 (77 FR 55681, September 11, 2012).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2965.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2965; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200

FOR FURTHER INFORMATION CONTACT: Chandra Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012) ("AD 2012–17–13"). AD 2012–17–13 applied to certain The Boeing Company Model 707 airplanes, and Model 720 and 720B series airplanes. The NPRM published in the **Federal Register** on July 30, 2015 (80 FR 45453) ("the NPRM"). The NPRM was prompted by a determination that all chord segments made of 7079 aluminum must be replaced with new, improved chord segments made of 7075 aluminum. The NPRM proposed to continue to require, for certain airplanes, using redefined flight cycle counts, determining the type of material of the horizontal stabilizer, rear spar, and upper and lower chords on the inboard and outboard ends of the rear spar; repetitively inspecting for cracking of the horizontal stabilizer components; and repairing or replacing the chord, or modifying chord segments made from 7079 aluminum, if necessary. The NPRM also proposed to continue to require, for all airplanes, inspecting certain structurally significant items, and repairing discrepancies if necessary. The NPRM proposed to add a requirement to replace all chord segments made of 7079 aluminum with new, improved chord segments made of 7075 aluminum. We are issuing this AD to detect and correct stress corrosion and potential early fatigue cracking in the horizontal stabilizer, which could compromise the structural integrity of the stabilizer.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Certain Language in Paragraph (i) of the Proposed AD

Boeing asked that we clarify the description of the affected components specified in paragraph (i) of the proposed AD, which is a restatement of paragraph (i) of AD 2012–17–13. Boeing stated that the intent of paragraph (i) of AD 2012–17–13 was to specify the inspection requirements for rear spar upper inboard chord segments made from 7075 aluminum. Boeing added that the restatement in paragraph (i) of the proposed AD specifies, "For all airplanes with horizontal stabilizer components made from 7075 . . ." and noted that this description could apply to any chord segment, not just the inboard upper. Boeing asked that the description be clarified to specify "any horizontal stabilizer with a rear spar upper inboard chord segment made from 7075 aluminum, as determined during the inspection required by paragraph (h) of this AD."

We agree to clarify paragraph (i) of this AD. The inspection required by paragraph (i) of this AD must be done on upper chords made from 7075 aluminum that are on the inboard end of the rear spar, as specified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; and Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014; which are the appropriate sources of service information for accomplishing the required actions. We have revised paragraph (i) of this AD to clarify the inspection requirements. No additional action is necessary for operators that have already complied with paragraph (i) of this AD.

Request To Clarify Certain Language in Paragraph (j) of the Proposed AD

Boeing also asked that we clarify the language in the restatement of actions specified in paragraph (j) of the proposed AD in order to specify that the inspections in paragraph (i) of the proposed AD can only be deferred for 4,000 flight cycles if the upper inboard chord is replaced with a new chord. Boeing stated that changing paragraph (i) of the proposed AD ensures that it is clear that the inspection can only be deferred for 4,000 flight cycles if the upper inboard chord is replaced.

We agree with the commenter for the reason provided. We have changed paragraph (j) of this AD to specify "For airplanes on which the rear spar upper inner chord is replaced with a new chord . . . :"

Request To Clarify Certain Language in Paragraph (q) of the Proposed AD

Boeing also asked that we clarify the language in the new actions specified in paragraph (q) of the proposed AD. Boeing stated that paragraph (j) of the proposed AD states when to resume the inspections after the chord is replaced. Boeing added that paragraph (i) of the proposed AD states the type of inspection and the repetitive inspection interval. Therefore, Boeing stated that paragraph (q) of the proposed AD should point to paragraph (i) of the proposed AD.

We agree to clarify paragraph (q) of this AD. As noted above, paragraph (j) of the this AD specifies inspecting the new chord within 4,000 flight cycles after the chord replacement, as required by paragraph (i) of this AD, and repeating the inspections thereafter at the times specified in paragraph (i) of this AD. Therefore, we have included similar language in paragraph (q) of this AD.

Request To Clarify Service Information References

In addition, Boeing asked that we include 707 in the title for "Boeing Service Bulletin 3381," as identified in paragraphs (k) and (l) of the proposed AD, to be consistent with all the other service information references in the NPRM.

We agree with the commenter for the reasons provided. We have changed the service information references in paragraphs (k)(3)(i) and (l) of this AD to specify "Boeing 707 Service Bulletin 3381."

Boeing also asked that we change the semi-colon (located between the service information references) in paragraph (k)(3)(ii) of the proposed AD to a comma, because it breaks up the sentence in an unintended way.

We do not agree to change the semi-colon in paragraph (k)(3)(ii) of this AD. In ADs, we use a semi-colon to separate service information references, except in cases where the semi-colon between service information might cause confusion, *e.g.*, a sentence that already uses semi-colons between text other than the service information. The semi-colon in paragraph (k)(3)(ii) of this AD does not change the intent of that paragraph. We have not changed this AD in this regard.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously, and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. The service information describes procedures for incorporating a new cycle counting procedure, determining the material for the horizontal stabilizer rear spar chord segment, inspecting for stress corrosion cracking and fatigue cracking, repair, and replacing all chord segments made of 7079 aluminum with new, improved chord segments made of 7075 aluminum. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 10 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

TABLE—ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Fleet cost
Retained inspections from AD 2012–17–13.	Up to 32 work-hours × $85 per hour = up to $2,720 per inspection cycle.	$0	Up to $2,720 per inspection cycle.	Up to $27,200 per inspection cycle.
Replacement [new action].	500 work-hours × $85 per work-hour = $42,500 per chord.	Up to $228,000 per chord.	Up to $2,705,000 (up to 10 chords per airplane) [1].	Up to $27,050,000.[2]

[1] The parts for the modification could cost up to $2.28 million per airplane, depending on whether only one operator is ordering the parts or multiple operators. The parts cost will go down if multiple operators order parts at the same time.

[2] The number of chords which must be replaced on each specific airplane varies.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), and adding the following new AD:

2016–08–11 The Boeing Company: Amendment 39–18487; Docket No. FAA–2015–2965; Directorate Identifier 2014–NM–227–AD.

(a) Effective Date

This AD is effective May 27, 2016.

(b) Affected ADs

This AD replaces AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category; identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 707 airplanes identified in Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(2) Model 720 and 720B series airplanes identified in Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by a determination that all chord segments made of 7079 aluminum must be replaced with new, improved chord segments made of 7075 aluminum. We are issuing this AD to detect and correct stress corrosion and potential early fatigue cracking in the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Flight Cycle Counting Procedure, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. Flight cycles, as used in this AD, must be counted as defined in the service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007 (for Model 707 airplanes).

(2) Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014 (for Model 707 airplanes).

(3) Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008 (for Model 707 airplanes, and Model 720 and 720B series airplanes).

(h) Retained Determination of Material of the Components of the Horizontal Stabilizer, With Revised Service Information

This paragraph restates the actions required by paragraph (h) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. For airplanes identified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014: At the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, determine the type of material of the horizontal stabilizer, rear spar, upper chords, and lower chords on the inboard and outboard ends of the rear spar, in accordance with Part 2 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(1) Within 180 days after October 16, 2012 (the effective date of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012)).

(2) Before further flight after any horizontal stabilizer is replaced after October 16, 2012.

(i) Retained Repetitive Inspections of 7075 Aluminum Components, With Revised Service Information and Affected Component Description

This paragraph restates the actions required by paragraph (i) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information and affected component description. For airplanes with any horizontal stabilizer with a rear spar upper inboard chord segment made from 7075 aluminum, as determined during the inspection required by paragraph (h) of this AD: Within 180 days after October 16, 2012 (the effective date of AD 2012–17–13), and before further flight after any replacement of the horizontal stabilizer, do a special detailed inspection for cracking of the upper chord on the inboard end of the rear spar on both the left and right side horizontal stabilizers, from stabilizer station −13.179 to 92.55, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Repeat the inspections thereafter at intervals not to exceed 500 flight cycles, and before further flight after any replacement of the horizontal stabilizer, except as provided by paragraph (j) of this AD. If any cracking is found, before further flight, either repair the cracking in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, except as required by paragraph (n) of this AD; or replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(j) Retained Repetitive Inspections on Airplanes With Replaced Chord, With Revised Service Information and Revised Language for Affected Airplanes

This paragraph restates the actions required by paragraph (j) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information and revised langue for affected airplanes. For airplanes on which the rear spar upper inner chord is replaced with a new chord in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014: Within 4,000 flight cycles after the chord replacement, inspect the new chord, as required by paragraph (i) of this AD, and repeat the inspections thereafter at the times specified in paragraph (i) of this AD.

(k) Retained Repetitive Inspections of 7079 Aluminum Components, With Revised Service Information

This paragraph restates the actions required by paragraph (k) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. For airplanes with horizontal stabilizers that have components of the chords of the rear spar made from 7079 aluminum, as determined during the inspection required by paragraph (h) of this AD: Within 180 days after October 16, 2012 (the effective date of AD 2012–17–13), do the actions required by paragraphs (k)(1), (k)(2), and (k)(3) of this AD, and repeat those actions at the applicable intervals specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) Do a special detailed inspection for cracking of the upper chord of the inboard side of the rear spar of both the left and right side horizontal stabilizers from stabilizer station −13.179 to 92.55, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Repeat the inspection thereafter at intervals not to exceed 250 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, either repair the cracking, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, except as required by paragraph (n) of this AD; or replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(2) Do a high frequency eddy current inspection for cracking of the web flanges of the upper and lower chords of the rear spar in the left and right side horizontal stabilizers from stabilizer stations 92.55 to 272.55, in accordance with Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, do the actions specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Determine whether the cracking meets the limits specified in Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, and whether a previous repair has been done; determine if all 7079 upper and lower chord segments installed on the horizontal stabilizer have had the Part II, Group 1, Preventative Modification specified in Boeing 707 Service Bulletin 3356 done; and do all applicable repairs and modifications, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007' or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Do the actions required by this paragraph in accordance with Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, except as required by paragraph (n) of this AD. Do all applicable repairs and modifications before further flight.

(ii) Replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(3) Do low frequency eddy current (LFEC) inspections for cracking of the forward skin flanges of the upper and lower chords of the rear spar in the left and right side horizontal stabilizers from stabilizer stations −13.179 to 272.55 (for lower chords) and 92.55 to 272.55 (for upper chords), in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Repeat the inspections thereafter at intervals not to exceed 1,000 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, do the actions specified in either paragraph (k)(3)(i) or paragraph (k)(3)(ii) of this AD.

(i) Repair any cracking, determine whether all 7079 upper and lower chord segments installed on the horizontal stabilizer have had the Part II—Preventative Modification specified in Boeing 707 Service Bulletin 3381 done, and do all applicable modifications, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Do the actions required by this paragraph in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, except as required by paragraph (n) of this AD. Do all applicable modifications before further flight.

(ii) Replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(l) Retained Modification/Chord Replacement, With Revised Service Information

This paragraph restates the actions required by paragraph (l) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. For airplanes identified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, with horizontal stabilizers that have rear spar chord components made from 7079 aluminum and have not had embodied the modification of Part II of Boeing 707 Service Bulletin 3381, dated July 25, 1980; or Boeing 707 Service Bulletin 3381, Revision 1, dated July 31, 1981: Before further flight after determining the type of material in accordance with paragraph (h) of this AD, modify all 7079 chord segments installed on the horizontal stabilizer, in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014; or replace the chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(m) Retained Supplemental Structural Inspection Document Inspections

This paragraph restates the actions required by paragraph (m) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012). For all airplanes: Within 180 days or 1,000 flight cycles after October 16, 2012 (the effective date of AD 2012–17–13), whichever occurs first, do the inspections of the applicable structurally significant items specified in and in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD. The inspections required by AD 85–12–01 R1, Amendment 39–5439 (51 FR 36002, October 8, 1986), are still required, except, as of October 16, 2012 (the effective date of AD 2012–17–13), the flight cycle interval for the repetitive inspections specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008, must be counted in accordance with the requirements of paragraph (g) of this AD.

(n) Retained Exception to Certain Service Information: Contacting FAA for Crack Repair

This paragraph restates the actions required by paragraph (n) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. If any cracking is found during any inspection required by this AD, and Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(o) Retained Exception to Certain Service Information: Nondestructive Test Compliance Procedures

This paragraph restates the requirements of paragraph (o) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. Where Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, specifies that operators "refer to" nondestructive test (NDT) procedures, the procedures must be done in accordance with the service information identified in paragraphs (o)(1), (o)(2), and (o)(3) of this AD, as applicable.

(1) Figure 20, "Electrical Conductivity Measurement for Aluminum," of Subject 51–00–00, "Structures-General," of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(2) Subject 55–10–07, "Horizontal Stabilizer," of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(3) Subject 51–01–00, "Orientation and Preparation for Testing" of Part 1—General, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(p) Retained Parts Installation Prohibition With Revised Service Information

This paragraph restates the parts installation prohibition required by paragraph (p) of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), with revised service information. As of October 16, 2012 (the effective date of AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012)), no person may install any horizontal stabilizer assembly with any chord segment having a part number other than that identified in paragraph 2.C.2. of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014, on any airplane.

(q) New Replacement of 7079 Aluminum Components

Within 48 months after the effective date of this AD: Replace all 7079 aluminum chord segments of the upper and lower chords installed on the horizontal stabilizer with 7075 aluminum chord segments, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014. Within 4,000 flight cycles after accomplishing the replacements required by this paragraph, inspect the new chord, as required by paragraph (i) of this AD, and repeat the inspections thereafter at the times specified in paragraph (i) of this AD.

(r) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (s) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2012–17–13, Amendment 39–17176 (77 FR 55681, September 11, 2012), are approved as AMOCs for the corresponding provisions of this AD.

(s) Related Information

For more information about this AD, contact Chandra Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov*.

(t) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing 707 Alert Service Bulletin A3515, Revision 1, dated October 10, 2014.

(ii) Reserved.

(3) The following service information was approved for IBR on October 16, 2012 (77 FR 55681, September 11, 2012).

(i) Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(ii) Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008.

(iii) Subject 51–00–00, "Structures-General," Figure 20, "Electrical Conductivity Measurement for Aluminum," of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified on only the manual revision Transmittal Sheet.

(iv) Subject 51–01–00, "Orientation and Preparation for Testing" of Part 1—General, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified on only the manual revision Transmittal Sheet.

(v) Subject 55–10–07, "Horizontal Stabilizer," of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified on only the manual revision Transmittal Sheet.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on April 5, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08539 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–5194; Airspace Docket No. 15–ACE–6]

Establishment of Class E Airspace; Coldwater, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in Coldwater, KS. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Comanche County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. Additionally, to this action corrects the spelling of the airport name to Comanche County Airport, inadvertently misspelled in the proposal.

DATES: Effective 0901 UTC, July 21, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Comanche County Airport, Coldwater, KS.

History

On February 11, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E Airspace in the Coldwater, KS area. (81 FR 7251) FAA 2015–5194. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Comanche County Airport, Coldwater, KS, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport. Additionally, the airport name is corrected from Commanche County Airport to Comanche County Airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Coldwater, KS [New]

Comanche County Airport, KS

(Lat. 37°13′22″ N., long. 099°19′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Comanche County Airport.

Issued in Fort Worth, TX, on April 12, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–09158 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–8060; Airspace Docket No. 15–ASW–4]

Establishment of Class E Airspace; Moriarty, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in Moriarty, NM. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Moriarty Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, May 26, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Moriarty Airport, Moriarty, NM.

History

On February 3, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E Airspace in the Moriarty, NM area. (81 FR 5676) FAA–2015–8060. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Moriarty

Airport, Moriarty, NM, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW NM E5 Moriarty, NM [New]

Moriarty Airport, NM

(Lat. 34°58′41″ N., long. 106°00′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Moriarty Airport.

Issued in Fort Worth, TX, on April 6, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–08758 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4836; Airspace Docket No. 15–ASW–16]

Establishment of Class E Airspace; Danville AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Danville Municipal Airport, Danville, AR, to accommodate new Standard Instrument Approach Procedures (SIAPs) for the safety and management of Instrument flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, May 26, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Danville Municipal Airport, Danville AR

History

On December 24, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Danville Municipal Airport, Danville, AR. (80 FR 80301). Docket No. FAA–2015–4836. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 11.0-mile radius of Danville Municipal Airport, Danville, AR, to accommodate new Standard Instrument Approach Procedures for IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g),; 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW AR E5 Danville, AR [New]

Danville Municipal Airport, AR
(Lat. 35°05′13″ N., long. 093°25′39″ W.)

That airspace extending upward from 700 feet above the surface within an 11.0-mile radius of Danville Municipal Airport.

Issued in Fort Worth, TX, on April 5, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–08765 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31070 Amdt. No. 3690]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA

Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866;(2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 25, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * *

Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–Apr–16	WA	Spokane	Spokane Intl	5/3564	02/29/16	This NOTAM, published in TL 16–09, is hereby rescinded in its entirety.
28–Apr–16	SC	Darlington	Darlington County Jetport.	6/2449	03/07/16	This NOTAM, published in TL 16–09, is hereby rescinded in its entirety.
28–Apr–16	NE	Minden	Pioneer Village Field	6/2710	02/22/16	This NOTAM, published in TL 16–09, is hereby rescinded in its entirety.
28–Apr–16	MI	Menominee	Menominee–Marinette Twin County.	5/0762	03/14/16	RNAV (GPS) RWY 21, Orig.
28–Apr–16	MI	Menominee	Menominee–Marinette Twin County.	5/0763	03/14/16	VOR–A, Amdt 3.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	5/6564	03/09/16	RNAV (GPS) Y RWY 18C, Amdt 3B.
28–Apr–16	IN	Richmond	Richmond Muni	5/7969	03/09/16	ILS OR LOC RWY 24, Amdt 1.
28–Apr–16	IN	Richmond	Richmond Muni	5/7971	03/09/16	RNAV (GPS) RWY 6, Orig.
28–Apr–16	IN	Richmond	Richmond Muni	5/7972	03/09/16.	RNAV (GPS) RWY 24, Orig.
28–Apr–16	IN	Richmond	Richmond Muni	5/7977	03/09/16	VOR RWY 6, Amdt 12.
28–Apr–16	IN	Richmond	Richmond Muni	5/7982	03/09/16	VOR RWY 24, Amdt 13.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–Apr–16	MO	Fulton	Elton Hensley Memorial	5/9540	03/10/16	RNAV (GPS) RWY 24, Amdt 1.
28–Apr–16	MO	Fulton	Elton Hensley Memorial	5/9541	03/10/16	RNAV (GPS) RWY 6, Amdt 1.
28–Apr–16	MO	Fulton	Elton Hensley Memorial	5/9542	03/10/16	VOR–A, Amdt 4.
28–Apr–16	MO	Fulton	Elton Hensley Memorial	5/9543	03/10/16	RNAV (GPS) RWY 18, Orig.
28–Apr–16	PA	Lehighton	Jake Arner Memorial	6/0164	03/14/16	RNAV (GPS) RWY 26, Amdt 1B.
28–Apr–16	PA	Lehighton	Jake Arner Memorial	6/0165	03/14/16	RNAV (GPS) RWY 8, Amdt 1B.
28–Apr–16	AZ	Window Rock	Window Rock	6/0461	03/14/16	RNAV (GPS) RWY 2, Amdt 1A.
28–Apr–16	AZ	Window Rock	Window Rock	6/0462	03/14/16	VOR/DME–A, Orig–C.
28–Apr–16	AZ	Window Rock	Window Rock	6/0463	03/14/16	RNAV (GPS)–B, Orig–B.
28–Apr–16	NY	Poughkeepsie	Dutchess County	6/0499	03/17/16	ILS OR LOC RWY 6, Amdt 6B.
28–Apr–16	NY	Poughkeepsie	Dutchess County	6/0500	03/17/16	RNAV (GPS) RWY 6, Orig–C.
28–Apr–16	NY	Poughkeepsie	Dutchess County	6/0501	03/17/16	RNAV (GPS) RWY 24, Orig–C.
28–Apr–16	NY	Poughkeepsie	Dutchess County	6/0502	03/17/16	VOR/DME RWY 24, Amdt 4D.
28–Apr–16	NY	Poughkeepsie	Dutchess County	6/0503	03/17/16	VOR–A, Amdt 11C.
28–Apr–16	AZ	Grand Canyon	Grand Canyon National Park.	6/0507	03/14/16	ILS OR LOC/DME RWY 3, Orig–B.
28–Apr–16	AZ	Grand Canyon	Grand Canyon National Park.	6/0508	03/14/16	VOR RWY 3, Amdt 5A.
28–Apr–16	NM	Santa Teresa	Dona Ana County At Santa Teresa.	6/1721	03/10/16	Takeoff Minimums and (Obstacle) DP, Orig.
28–Apr–16	TN	Portland	Portland Muni	6/1908	03/14/16	RNAV (GPS) RWY 19, Orig.
28–Apr–16	TN	Portland	Portland Muni	6/1910	03/14/16	RNAV (GPS) RWY 1, Orig.
28–Apr–16	IN	Greencastle	Putnam County Rgnl	6/2287	03/10/16	VOR/DME–A, Amdt 6.
28–Apr–16	IN	Greencastle	Putnam County Rgnl	6/2288	03/10/16	RNAV (GPS) RWY 18, Amdt 1.
28–Apr–16	IN	Greencastle	Putnam County Rgnl	6/2289	03/10/16	RNAV (GPS) RWY 36, Amdt 1A.
28–Apr–16	NE	Cozad	Cozad Muni	6/2707	03/10/16	RNAV (GPS) RWY 13, Amdt 1.
28–Apr–16	NE	Cozad	Cozad Muni	6/2708	03/10/16	RNAV (GPS) RWY 31, Amdt 1.
28–Apr–16	NE	Cozad	Cozad Muni	6/2712	03/10/16	VOR RWY 13, Amdt 2.
28–Apr–16	KS	Emporia	Emporia Muni	6/2726	03/09/16	RNAV (GPS) RWY 1, Orig.
28–Apr–16	KS	Emporia	Emporia Muni	6/2727	03/09/16	RNAV (GPS) RWY 19, Orig.
28–Apr–16	WI	Sturgeon Bay	Door County Cherryland	6/3138	03/14/16	RNAV (GPS) RWY 28, Orig.
28–Apr–16	WI	Sturgeon Bay	Door County Cherryland	6/3142	03/14/16	RNAV (GPS) RWY 20, Amdt 1.
28–Apr–16	WI	Sturgeon Bay	Door County Cherryland	6/3144	03/14/16	RNAV (GPS) RWY 10, Orig.
28–Apr–16	WI	Sturgeon Bay	Door County Cherryland	6/3146	03/14/16	RNAV (GPS) RWY 2, Amdt 1A.
28–Apr–16	NY	Potsdam	Potsdam Muni/Damon Fld/.	6/3300	03/14/16	NDB RWY 24, Amdt 5A.
28–Apr–16	NY	Potsdam	Potsdam Muni/Damon Fld/.	6/3301	03/14/16	RNAV (GPS) RWY 24, Orig.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3420	03/09/16	ILS OR LOC RWY 5, Amdt 38.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3421	03/09/16	ILS OR LOC RWY 18C, Amdt 10C.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3422	03/09/16	ILS OR LOC RWY 23, Amdt 3B.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3423	03/09/16	ILS OR LOC RWY 36C, Amdt 16B.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3424	03/09/16	RNAV (GPS) Y RWY 5, Amdt 3.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3425	03/09/16	RNAV (GPS) Y RWY 23, Amdt 1.
28–Apr–16	NC	Charlotte	Charlotte/Douglas Intl	6/3426	03/09/16	RNAV (GPS) Y RWY 36C, Amdt 3B.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/3719	03/14/16	ILS V RWY 30R (Converging), Amdt 3A.
28–Apr–16	KS	Emporia	Emporia Muni	6/3792	03/09/16	VOR–A, Amdt 14.
28–Apr–16	OR	Medford	Rogue Valley Intl—Medford.	6/3825	03/10/16	Takeoff Minimums and (Obstacle) DP, Amdt 10.
28–Apr–16	OH	Wooster	Wayne County	6/4046	03/10/16	VOR RWY 28, Orig–C.
28–Apr–16	OH	Wooster	Wayne County	6/4048	03/10/16	RNAV (GPS) RWY 28, Orig.
28–Apr–16	TX	Marshall	Harrison County	6/4051	03/14/16	RNAV (GPS) RWY 33, Orig–A.
28–Apr–16	TX	Marshall	Harrison County	6/4052	03/14/16	RNAV (GPS) RWY 15, Orig–A.
28–Apr–16	TX	Marshall	Harrison County	6/4053	03/14/16	VOR/DME–A, Amdt 4D.
28–Apr–16	MT	Dillon	Dillon	6/4502	03/09/16	VOR–A, Amdt 8.
28–Apr–16	MT	Dillon	Dillon	6/4503	03/09/16	VOR/DME–B, Amdt 2.
28–Apr–16	MT	Dillon	Dillon	6/4506	03/09/16	RNAV (GPS) RWY 17, Amdt 1A.
28–Apr–16	GA	Columbus	Columbus	6/4743	03/14/16	RNAV (GPS) RWY 13, Orig–A.
28–Apr–16	GA	Columbus	Columbus	6/4744	03/14/16	ILS OR LOC RWY 6, Amdt 25B.
28–Apr–16	GA	Columbus	Columbus	6/4749	03/14/16	RNAV (GPS) RWY 24, Orig–A.
28–Apr–16	NY	Syracuse	Syracuse Hancock Intl	6/4922	03/14/16	TACAN RWY 33, Orig–A.
28–Apr–16	NY	Syracuse	Syracuse Hancock Intl	6/4923	03/14/16	ILS OR LOC RWY 10, Amdt 13.
28–Apr–16	NY	Syracuse	Syracuse Hancock Intl	6/4924	03/14/16	VOR RWY 15, Amdt 23A.
28–Apr–16	NY	Syracuse	Syracuse Hancock Intl	6/4925	03/14/16	ILS OR LOC RWY 28, ILS RWY 28 (SA CAT I), ILS RWY 28 (CAT II), Amdt 34A.
28–Apr–16	VT	Bennington	William H Morse State	6/4995	03/14/16	VOR RWY 13, Amdt 1A.
28–Apr–16	SC	Darlington	Darlington County Jetport.	6/5046	03/14/16	NDB RWY 23, Amdt 1.
28–Apr–16	LA	Houma	Houma–Terrebonne	6/5719	03/14/16	ILS OR LOC RWY 18, Amdt 4.
28–Apr–16	ND	Grand Forks	Grand Forks Intl	6/5851	03/14/16	ILS OR LOC RWY 35L, Amdt 12.
28–Apr–16	ND	Grand Forks	Grand Forks Intl	6/5852	03/14/16	RNAV (GPS) RWY 35L, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–Apr–16	ND	Grand Forks	Grand Forks Intl	6/5853	03/14/16	VOR RWY 35L, Amdt 7.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/5959	03/14/16	ILS V RWY 30L (Converging), Amdt 2.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/5960	03/14/16	RNAV (GPS) Z RWY 30L, Amdt 4.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/5961	03/14/16	ILS V RWY 35 (Converging), Amdt 4.
28–Apr–16	TN	Dickson	Dickson Muni	6/6275	03/14/16	NDB RWY 17, Amdt 2D.
28–Apr–16	TN	Dickson	Dickson Muni	6/6276	03/14/16	VOR/DME RWY 17, Amdt 4E.
28–Apr–16	NC	New Bern	Coastal Carolina Regional.	6/6301	03/10/16	RNAV (GPS) RWY 4, Amdt 1.
28–Apr–16	WV	Bluefield	Mercer County	6/6304	03/14/16	ILS OR LOC RWY 23, Amdt 15A.
28–Apr–16	WV	Bluefield	Mercer County	6/6305	03/14/16	VOR/DME RWY 23, Amdt 5A.
28–Apr–16	WV	Bluefield	Mercer County	6/6306	03/14/16	RNAV (GPS) RWY 23, Orig–A.
28–Apr–16	TN	Nashville	John C Tune	6/6369	03/14/16	ILS OR LOC/DME RWY 20, Amdt 2.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/6424	03/14/16	ILS Z OR LOC RWY 30R, Amdt 15.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/6426	03/14/16	RNAV (GPS) Z RWY 30R, Amdt 3.
28–Apr–16	TX	Seymour	Seymour Muni	6/6437	03/09/16	GPS RWY 17, Orig.
28–Apr–16	VA	Newport News	Newport News/Williamsburg Intl.	6/6676	03/10/16	RNAV (GPS) RWY 25, Amdt 2A.
28–Apr–16	VA	Newport News	Newport News/Williamsburg Intl.	6/6679	03/10/16	ILS OR LOC RWY 25, Amdt 1B.
28–Apr–16	MT	Butte	Bert Mooney	6/6791	03/14/16	LOC/DME RWY 15, Amdt 7.
28–Apr–16	AZ	Grand Canyon	Grand Canyon National Park.	6/7427	03/14/16	RNAV (GPS) RWY 3, Orig–A.
28–Apr–16	MA	Taunton	Taunton Muni—King Field.	6/7777	03/14/16	NDB RWY 30, Amdt 5A.
28–Apr–16	MA	Taunton	Taunton Muni—King Field.	6/7778	03/14/16	RNAV (GPS) RWY 30, Orig–A.
28–Apr–16	WI	Viroqua	Viroqua Muni	6/7802	03/10/16	RNAV (GPS) RWY 29, Orig–A.
28–Apr–16	WA	Spokane	Spokane Intl	6/8435	03/22/16	RNAV (RNP) Z RWY 7, Orig.
28–Apr–16	OH	Wooster	Wayne County	6/8706	03/22/16	VOR RWY 10, Amdt 1.
28–Apr–16	MN	Minneapolis	Minneapolis–St Paul Intl/ Wold–Chamberlain.	6/8908	03/14/16	ILS Z OR LOC RWY 30L, ILS Z RWY 30 L (CAT II), Amdt 46A.
28–Apr–16	MT	Deer Lodge	Deer Lodge–City–County	6/9524	03/14/16	RNAV (GPS)–A, Orig.
28–Apr–16	CA	Los Angeles	Los Angeles Intl	6/9824	03/17/16	RNAV (RNP) Z RWY 6L, Orig–C.

[FR Doc. 2016–08753 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31072 Amdt. No. 3692]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight

Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 8, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Apr–16	IN	Richmond	Richmond Muni	5/7982	03/09/16	This NOTAM, published in TL 16–10, is hereby rescinded in its entirety.
26–May–16	HI	Kapolei	Kalaeloa (John Rodgers Field).	5/0254	03/23/16	RNAV (GPS) RWY 4R, Orig.
26–May–16	IA	Spencer	Spencer Muni	5/1841	03/23/16	RNAV (GPS) RWY 30, Amdt 1A.
26–May–16	AK	Akhiok	Akhiok	5/3029	03/23/16	RNAV (GPS)–A, Orig-A.
26–May–16	TX	Liberty	Liberty Muni	5/3389	03/29/16	VOR–A, Amdt 5A.
26–May–16	TX	Beeville	Beeville Muni	5/8357	03/23/16	Takeoff Minimums and (Obstacle) DP, Orig.
26–May–16	AK	Anvik	Anvik	5/9205	03/23/16	RNAV (GPS) RWY 35, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
26–May–16	AK	Anvik	Anvik	5/9206	03/23/16	RNAV (GPS) RWY 17, Orig.
26–May–16	ID	Bonners Ferry	Boundary County	5/9411	03/23/16	RNAV (GPS) RWY 2, Orig-C.
26–May–16	OH	Bowling Green	Wood County	5/9847	03/29/16	RNAV (GPS) RWY 10, Orig-B.
26–May–16	OH	Bowling Green	Wood County	5/9848	03/29/16	RNAV (GPS) RWY 18, Orig-A.
26–May–16	OH	Bowling Green	Wood County	5/9849	03/29/16	RNAV (GPS) RWY 28, Orig-A.
26–May–16	OH	Bowling Green	Wood County	5/9850	03/29/16	VOR RWY 18, Amdt 13.
26–May–16	OH	Bowling Green	Wood County	5/9851	03/29/16	RNAV (GPS) RWY 36, Orig-A.
26–May–16	GA	Nashville	Berrien Co	6/0127	04/01/16	RNAV GPS RWY 28, Orig.
26–May–16	GA	Nashville	Berrien Co	6/0128	04/01/16	RNAV (GPS) RWY 10, Orig.
26–May–16	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	6/0159	03/29/16	RNAV (GPS) RWY 15L, Amdt 4.
26–May–16	MT	Polson	Polson	6/0247	03/28/16	RNAV (GPS) RWY 36, Orig-A.
26–May–16	MT	Polson	Polson	6/0248	03/28/16	RNAV (GPS) RWY 18, Orig-C.
26–May–16	KS	Anthony	Anthony Muni	6/0845	03/28/16	RNAV (GPS) RWY 36, Orig.
26–May–16	TX	Terrell	Terrell Muni	6/0884	04/01/16	RNAV (GPS) RWY 17, Orig.
26–May–16	TX	Terrell	Terrell Muni	6/0885	04/01/16	RNAV (GPS) RWY 35, Orig.
26–May–16	AK	Koyuk	Koyuk Alfred Adams	6/0907	03/23/16	RNAV (GPS) RWY 1, Orig.
26–May–16	AK	Koyuk	Koyuk Alfred Adams	6/0908	03/23/16	NDB RWY 1, Amdt 1B.
26–May–16	MT	Havre	Havre City-County	6/1154	03/28/16	VOR RWY 8, Amdt 7.
26–May–16	FL	Crystal River	Crystal River-Captain Tom Davis Fld.	6/1227	04/01/16	RNAV (GPS) RWY 9, Amdt 1B.
26–May–16	CT	Windsor Locks	Bradley Intl	6/1230	04/01/16	ILS OR LOC RWY 33, Amdt 10A.
26–May–16	CT	Windsor Locks	Bradley Intl	6/1232	04/01/16	RNAV (GPS) RWY 33, Amdt 2B.
26–May–16	GA	Athens	Athens/Ben Epps	6/1625	04/01/16	VOR RWY 27, Amdt 13.
26–May–16	GA	Athens	Athens/Ben Epps	6/1631	04/01/16	ILS OR LOC/DME RWY 27, Amdt 2.
26–May–16	KS	Russell	Russell Muni	6/1658	03/28/16	RNAV (GPS) RWY 35, Orig.
26–May–16	KS	Russell	Russell Muni	6/1659	03/28/16	VOR/DME–A, Amdt 5.
26–May–16	KY	Frankfort	Capital City	6/1914	04/01/16	RNAV (GPS) RWY 25, Amdt 4.
26–May–16	ME	Greenville	Greenville	6/1917	04/01/16	RNAV (GPS)-B, Orig.
26–May–16	VT	West Dover	Deerfield Valley Rgnl	6/2148	04/01/16	RNAV (GPS) RWY 1, Orig.
26–May–16	CA	Jackson	Westover Field Amador County.	6/2261	04/01/16	GPS RWY 1, Orig-A.
26–May–16	CA	Jackson	Westover Field Amador County.	6/2262	04/01/16	VOR/DME RWY 1, Amdt 1A.
26–May–16	TX	San Antonio	Stinson Muni	6/2338	03/23/16	RNAV (GPS) RWY 32, Orig.
26–May–16	TX	San Antonio	Stinson Muni	6/2340	03/23/16	VOR RWY 32, Amdt 14.
26–May–16	NC	Rocky Mount	Rocky Mount-Wilson Rgnl	6/2430	04/01/16	ILS OR LOC RWY 4, Amdt 16A.
26–May–16	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	6/2575	03/23/16	RNAV (GPS) RWY 12, Amdt 1.
26–May–16	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	6/2576	03/23/16	ILS OR LOC/DME RWY 12, Orig.
26–May–16	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	6/2577	03/23/16	RNAV (GPS) RWY 22, Orig-C.
26–May–16	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	6/2578	03/23/16	RNAV (GPS) RWY 30, Orig-B.
26–May–16	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	6/2581	03/23/16	VOR RWY 30, Amdt 11A.
26–May–16	MN	Ortonville	Ortonville Muni-Martinson Field.	6/2941	04/01/16	NDB RWY 34, Amdt 2A.
26–May–16	MS	West Point	Mccharen Field	6/3601	04/01/16	VOR/DME–B, Amdt 5A.
26–May–16	MD	Baltimore	Martin State	6/3881	04/01/16	LOC RWY 15, Amdt 3A.
26–May–16	OR	Newport	Newport Muni	6/3922	04/01/16	VOR/DME RWY 34, Amdt 1B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
26–May–16	LA	Patterson	Harry P Williams Memorial	6/3945	04/01/16	ILS OR LOC/DME RWY 24, Amdt 2C.
26–May–16	MA	New Bedford	New Bedford Rgnl	6/4544	03/29/16	RNAV (GPS) RWY 32, Orig-A.
26–May–16	MA	New Bedford	New Bedford Rgnl	6/4545	03/29/16	RNAV (GPS) RWY 14, Orig-A.
26–May–16	AR	Russellville	Russellville Rgnl	6/4624	04/01/16	RNAV (GPS) RWY 25, Orig-A.
26–May–16	SC	Aiken	Aiken Muni	6/4688	04/01/16	RNAV (GPS) RWY 7, Amdt 1B.
26–May–16	SC	Aiken	Aiken Muni	6/4693	04/01/16	RNAV (GPS) RWY 25, Amdt 1B.
26–May–16	SC	Aiken	Aiken Muni	6/4695	04/01/16	NDB RWY 25, Amdt 10B.
26–May–16	CA	Fortuna	Rohnerville	6/4907	04/01/16	VOR RWY 11, Amdt 3.
26–May–16	CA	Fortuna	Rohnerville	6/4909	04/01/16	GPS RWY 11, Orig.
26–May–16	CA	Fortuna	Rohnerville	6/4911	04/01/16	GPS RWY 29, Orig.
26–May–16	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	6/6280	04/01/16	RNAV (GPS) RWY 33, Orig-A.
26–May–16	NJ	West Milford	Greenwood Lake	6/6364	04/01/16	RNAV (GPS) RWY 6, Amdt 1A.
26–May–16	NJ	West Milford	Greenwood Lake	6/6365	04/01/16	RNAV (GPS) RWY 24, Orig-A.
26–May–16	MO	Lamar	Lamar Muni	6/6409	03/23/16	RNAV (GPS) RWY 17, Orig.
26–May–16	MO	Lamar	Lamar Muni	6/6410	03/23/16	RNAV (GPS) RWY 35, Orig.
26–May–16	NC	Salisbury	Rowan County	6/6984	03/29/16	RNAV (GPS) RWY 2, Amdt 1.
26–May–16	NC	Salisbury	Rowan County	6/6985	03/29/16	ILS OR LOC RWY 20, Amdt 1.
26–May–16	NC	Salisbury	Rowan County	6/6986	03/29/16	RNAV (GPS) RWY 20, Amdt 1.
26–May–16	NC	Salisbury	Rowan County	6/6988	03/29/16	NDB RWY 20, Amdt 1.
26–May–16	AL	Clayton	Clayton Muni	6/7091	04/01/16	RNAV (GPS) RWY 27, Amdt 1.
26–May–16	AL	Clayton	Clayton Muni	6/7092	04/01/16	RNAV (GPS) RWY 9, Orig.
26–May–16	IN	Marion	Marion Muni	6/7308	03/23/16	RNAV (GPS) RWY 4, Orig-A.
26–May–16	IN	Marion	Marion Muni	6/7309	03/23/16	VOR RWY 4, Amdt 13B.
26–May–16	IN	Marion	Marion Muni	6/7310	03/23/16	ILS OR LOC RWY 4, Amdt 7B.
26–May–16	IN	Marion	Marion Muni	6/7311	03/23/16	RNAV (GPS) RWY 15, Orig-B.
26–May–16	IN	Marion	Marion Muni	6/7312	03/23/16	RNAV (GPS) RWY 33, Orig-B.
26–May–16	IN	Marion	Marion Muni	6/7313	03/23/16	VOR RWY 15, Amdt 10C.
26–May–16	IN	Marion	Marion Muni	6/7314	03/23/16	VOR RWY 22, Amdt 16.
26–May–16	IN	Marion	Marion Muni	6/7315	03/23/16	RNAV (GPS) RWY 22, Orig-A.
26–May–16	SD	Watertown	Watertown Rgnl	6/7373	03/23/16	Takeoff Minimums and (Obstacle) DP, Orig.
26–May–16	VT	Lyndonville	Caledonia County	6/7436	04/01/16	RNAV (GPS) RWY 2, Orig-B.
26–May–16	WV	Wheeling	Wheeling Ohio Co	6/7684	04/01/16	RNAV (GPS) RWY 34, Orig.
26–May–16	KY	Princeton	Princeton-Caldwell County	6/7783	04/01/16	RNAV (GPS) RWY 5, Orig.
26–May–16	KY	Princeton	Princeton-Caldwell County	6/7784	04/01/16	RNAV (GPS) RWY 23, Orig.
26–May–16	OR	Lakeview	Lake County	6/8140	03/28/16	VOR/DME–A, Orig.
26–May–16	GA	Mc Rae	Telfair-Wheeler	6/8276	04/01/16	RNAV (GPS) RWY 21, Amdt 1.
26–May–16	IN	Peru	Peru Muni	6/8282	03/29/16	VOR RWY 1, Amdt 8.
26–May–16	IN	Peru	Peru Muni	6/8285	03/29/16	RNAV (GPS) RWY 1, Orig.
26–May–16	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	6/8406	03/29/16	RNAV (GPS) RWY 33 R, Amdt 4.
26–May–16	TX	Panhandle	Panhandle-Carson County	6/8926	03/29/16	RNAV (GPS) RWY 17, Orig-A.
26–May–16	TN	Sevierville	Gatlinburg-Pigeon Forge	6/9200	03/29/16	Takeoff Minimums and (Obstacle) DP, Amdt 4.

[FR Doc. 2016–08756 Filed 4–21–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31071; Amdt. No. 3691]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866;(2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on April 8, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 26 MAY 2016

Cottonwood, AZ, Cottonwood, MINGY ONE, Graphic DP

Bakersfield, CA, Meadows Field, Takeoff Minimums and Obstacle DP, Amdt 3

Fresno, CA, Fresno Yosemite Intl, Takeoff Minimums and Obstacle DP, Amdt 8A

Long Beach, CA, Long Beach/Daugherty Field/, Takeoff Minimums and Obstacle DP, Amdt 6

Colorado Springs, CO, City Of Colorado Springs Muni, ILS OR LOC RWY 17L, ILS RWY 17L (SA CAT I), ILS RWY 17L (CAT II), Amdt 3

Colorado Springs, CO, City Of Colorado Springs Muni, ILS OR LOC RWY 35L, Amdt 38

Colorado Springs, CO, City Of Colorado Springs Muni, ILS OR LOC RWY 35R, Amdt 2

Colorado Springs, CO, City Of Colorado Springs Muni, NDB RWY 35L, Amdt 27

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 31, Amdt 2

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) Y RWY 17L, Amdt 3

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) Y RWY 17R, Amdt 3

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) Y RWY 35L, Amdt 1

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) Y RWY 35R, Amdt 4

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (RNP) Z RWY 17L, Amdt 2

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (RNP) Z RWY 17R, Amdt 1

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (RNP) Z RWY 35L, Amdt 1

Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (RNP) Z RWY 35R, Amdt 1

Colorado Springs, CO, City Of Colorado Springs Muni, Takeoff Minimums and Obstacle DP, Amdt 12

Pueblo, CO, Pueblo Memorial, ILS OR LOC RWY 8R, Amdt 1

Pueblo, CO, Pueblo Memorial, ILS OR LOC RWY 26L, Amdt 1

Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 8R, Amdt 1

Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 26L, Amdt 1

Pueblo, CO, Pueblo Memorial, Takeoff Minimums and Obstacle DP, Amdt 7

Pueblo, CO, Pueblo Memorial, VOR RWY 26L, Amdt 1

Athens, GA, Athens/Ben Epps, RNAV (GPS) RWY 27, Amdt 1A

Kahului, HI, Kahului, RNAV (GPS) RWY 20, Amdt 1

Fairfield, IA, Fairfield Muni, NDB RWY 36, Amdt 9A, CANCELED

Battle Creek, MI, W K Kellogg, VOR RWY 23R, Amdt 18, CANCELED

Saginaw, MI, MBS Intl, RADAR 1, Amdt 9, CANCELED

Hettinger, ND, Hettinger Muni, RNAV (GPS) RWY 12, Orig

Hettinger, ND, Hettinger Muni, RNAV (GPS) RWY 30, Amdt 1

Blair, NE., Blair Muni, RNAV (GPS) RWY 13, Amdt 1

Blair, NE., Blair Muni, RNAV (GPS) RWY 31, Amdt 1

Norman, OK, University of Oklahoma Westheimer, Takeoff Minimums and Obstacle DP, Amdt 1A

Klamath Falls, OR, Crater Lake-Klamath Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5A

Bradford, PA, Bradford Rgnl, ILS OR LOC RWY 32, Amdt 12C

Bradford, PA, Bradford Rgnl, RNAV (GPS) RWY 14, Amdt 1C

Bradford, PA, Bradford Rgnl, RNAV (GPS) RWY 32, Amdt 1D

Wellsboro, PA, Wellsboro Johnston, Takeoff Minimums and Obstacle DP, Amdt 3A

Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 23, ILS RWY 23 (SA CAT I), ILS RWY 23 (SA CAT II), Amdt 7

Providence, RI, Theodore Francis Green State, RNAV (GPS) Y RWY 23, Amdt 2

Aiken, SC, Aiken Muni, VOR/DME–A, Amdt 1A, CANCELED

Rhinelander, WI, Rhinelander-Oneida County, VOR RWY 9, Amdt 4E, CANCELED

Beckley, WV, Raleigh County Memorial, VOR RWY 19, Amdt 4, CANCELED

Bluefield, WV, Mercer County, VOR RWY 23, Amdt 9A, CANCELED

[FR Doc. 2016–08754 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31069; Amdt. No. 3689]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 25, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 April 2016

Birmingham, AL, Birmingham-Shuttlesworth Intl, ILS OR LOC/DME RWY 24, Amdt 3
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (GPS) Y RWY 24, Amdt 3
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 24, Amdt 1
Patterson, LA, Harry P Williams Memorial, NDB RWY 6, Amdt 11B, CANCELED
Glens Falls, NY, Floyd Bennett Memorial, ILS OR LOC RWY 1, Amdt 5
Coshocton, OH, Richard Downing, GPS RWY 22, Orig–A, CANCELED
Coshocton, OH, Richard Downing, RNAV (GPS) RWY 22, Orig
Coshocton, OH, Richard Downing, VOR–A, Amdt 10

Effective 26 May 2016

South Naknek, AK, South Naknek NR 2, RNAV (GPS) RWY 13, Orig
South Naknek, AK, South Naknek NR 2, RNAV (GPS) RWY 31, Orig
South Naknek, AK, South Naknek NR 2, Takeoff Minimums and Obstacle DP, Orig
Selma, AL, Craig field, NDB RWY 33, Amdt 5, CANCELED
Cottonwood, AZ, Cottonwood, RNAV (GPS) RWY 32, Orig
Cottonwood, AZ, Cottonwood, Takeoff Minimums and Obstacle DP, Orig
Burbank, CA, Bob Hope, GPS–A, Orig–B, CANCELED
Burbank, CA, Bob Hope, ILS Y OR LOC Y RWY 8, Amdt 5
Burbank, CA, Bob Hope, ILS Z OR LOC Z RWY 8, Amdt 38
Burbank, CA, Bob Hope, RNAV (GPS)–A, Orig
Burbank, CA, Bob Hope, RNAV (GPS) Z RWY 8, Amdt 1
Burbank, CA, Bob Hope, RNAV (RNP) Y RWY 8, Amdt 1
Burbank, CA, Bob Hope, RNAV (RNP) Z RWY 8, Amdt 1A, CANCELED

Burbank, CA, Bob Hope, VOR RWY 8, Amdt 12
Boise, ID, Boise Air Terminal/Gowen Fld, GOWEN TWO, Graphic DP
Indian Head, MD, Maryland, RNAV (GPS) RWY 2, Amdt 1
Bay St Louis, MS, Stennis Intl, ILS Y OR LOC Y RWY 18, Orig
Bay St Louis, MS, Stennis Intl, ILS Z OR LOC Z RWY 18, Amdt 2
Bay St Louis, MS, Stennis Intl, NDB RWY 18, Amdt 2
Bay St Louis, MS, Stennis Intl, RNAV (GPS) RWY 18, Amdt 2
Bay St Louis, MS, Stennis Intl, RNAV (GPS) RWY 36, Amdt 3
Cambridge, NE, Cambridge Muni, NDB RWY 15, Amdt 4
Cambridge, NE, Cambridge Muni, RNAV (GPS) RWY 15, Amdt 1
Cambridge, NE, Cambridge Muni, RNAV (GPS) RWY 33, Amdt 1
Cambridge, NE, Cambridge Muni, Takeoff Minimums and Obstacle DP, Orig
Bennington, VT, William H Morse State, RNAV (GPS) RWY 13, Orig–D

[FR Doc. 2016–08751 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1704

Mandatory Declassification Review Program

AGENCY: Office of the Director of National Intelligence.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Office of the Director of National Intelligence (ODNI) is withdrawing a direct final rule that would have provided procedures for members of the public to request from ODNI a Mandatory Declassification Review (MDR) of information classified under the provisions of Executive Order 13526 or predecessor orders such that the agency may retrieve it with reasonable effort.

DATES: As of April 22, 2016, the direct final rule published on February 26, 2016, at 81 FR 9768, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Hudson, 703–874–8085.

SUPPLEMENTARY INFORMATION: On February 26, 2016, the ODNI published a direct final rule providing procedures for members of the public to request from ODNI an MDR of information classified under the provisions of Executive Order 13526 or predecessor orders such that the agency may retrieve it with reasonable effort. The purpose of this rule was to assist in implementing specific sections of Executive Order 13526 concerning the MDR. In response to this direct final rule, ODNI received comments regarding the fee provisions stated in Section 1704.8 and the recommendation that those provisions be withdrawn and replaced with fee provisions comparable to those in ODNI's Freedom of Information Act program (32 CFR 1700.6). ODNI agrees and therefore is withdrawing its direct final rule. It will simultaneously issue a new direct final rule and a proposed rule reflecting that recommendation.

Dated: April 12, 2016.

Mark W. Ewing,

Chief Management Officer.

[FR Doc. 2016–09253 Filed 4–21–16; 8:45 am]

BILLING CODE 9500–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0327]

Special Local Regulation; Regattas and Marine Parades in the COTP Lake Michigan Zone—Chinatown Chamber of Commerce Dragon Boat Race, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the South Branch of the Chicago River for the Chinatown Chamber of Commerce Dragon Boat Race in Chicago, Illinois. This regulated area will be enforced from 8 a.m. until 5 p.m. on June 25, 2016. This action is necessary and intended to ensure safety of life and property on navigable waters prior to, during, and immediately after the Dragon Boat race. During the enforcement period, no vessel may enter, transit through, or anchor within the regulated area without the approval from the Captain of the Port or a designated representative.

DATES: The regulation in 33 CFR 100.909 will be enforced from 8 a.m. until 5 p.m. on June 25, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Lindsay Cook, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *Lindsay.N.Cook@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation in 33 CFR 100.909 from 8 a.m. until 5 p.m. on June 25, 2016, for the Chinatown Chamber of Commerce Dragon Boat Race. This action is being taken to provide for the safety of life on a navigable waterway during the regatta. Our regulation for the Recurring Marine Events in Captain of the Port Lake Michigan Zone, § 100.909, specifies the location of the regulated area as all waters of the South Branch of the Chicago River from the West 18th St. Bridge at position 41°51′28″ N., 087°38′06″ W. to the Amtrak Bridge at position 41°51′20″ N., 087°38′13″ W. (NAD 83). During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Lake Michigan or a designated representative.

Vessels that obtain prior approval to transit the regulated area are required to operate at a no wake speed to reduce wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. The Captain of the Port or a designated representative may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area.

This notice of enforcement is issued under authority of 33 CFR 100.909, Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this special local regulation via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan, or a designated on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: April 12, 2016.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2016–09411 Filed 4–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2015–0854]

RIN 1625–AA00, AA08

Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is amending the regulations established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. This interim rule revises the listing of events that informs the public of regularly scheduled marine parades, regattas, other organized water events, and fireworks displays that require additional safety measures provided by regulations. Through this rule, the list of recurring marine events requiring special local regulations or safety zones is updated with revisions, additional events, and removal of events that no longer take place in the Fifth Coast Guard District. When these regulations are enforced, certain restrictions are placed on marine traffic in specified areas. This rulemaking project promotes efficiency by eliminating the need to produce a separate rule for each individual recurring event, and serves to provide notice of the known recurring events requiring a special local regulation or safety zone throughout the year. We invite your comments on this rulemaking.

DATES: This rule is effective without actual notice from April 22, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 5, 2016, until April 22, 2016. Comments and related material must be received by the Coast Guard on or before July 21, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0854 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division, (757) 398–6204, *Dennis.M.Sens@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Regulatory History and Information

The special local regulations listed in 33 CFR 100.501 and safety zones in 33 CFR 165.506 were last amended on April 16, 2015, (80 FR 20418). The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to protect the maritime public during certain marine events. The potential dangers posed by certain marine events and fireworks displays conducted on waterways in close proximity to other vessel traffic makes special local regulations and safety zones necessary to provide for the safety of participants, spectator craft, and other vessels transiting the event area. Accordingly, waiting for a comment period to run would be contrary to the public interest of protecting life and property. In addition, publishing an NPRM is impracticable because the necessary information regarding these annual recurring marine events and fireworks displays was not available in sufficient time to ensure accurate and up to date listings to allow for a comment period prior to the events.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Additionally, providing a 30-day notice would unnecessarily delay the effective dates for the events listed to occur in May and June of 2016, which are also noticed to the public through local media outlets, and are planned on by the local communities where they take place.

This interim rule is effective upon publication without prior notice through publication in the **Federal Register**, however we invite comments regarding the updated list of marine events. The Coast Guard will address all comments accordingly, whether through response, additional revision to the regulations, or otherwise.

This rule is prepared to provide the most up to date list of recurring marine events, special local regulations and safety zones, provides ample notice for all listed events occurring after May 2016. Additionally, these recurring events are noticed to the public through local media and planned on by the local communities in which they take place.

The current lists of annual and recurring special local regulations and safety zones for marine events and fireworks displays within the Fifth Coast Guard District area of responsibility (AOR) are published under 33 CFR part 100.501 and part 165.506, respectively. These lists were last updated April 16, 2015 through a previous rulemaking (80 FR 20418), and generated no adverse comments. Like this interim rule, the April 2015 rule added to, removed from, and amended 33 CFR 100.501 and 33 CFR 165.506 to create a comprehensive list of recurring marine events and fireworks displays requiring special local regulations and safety zones.

III. Background, Purpose, and Legal Basis

The Coast Guard regularly updates special local regulations and safety zones established for recurring marine events and fireworks displays that take place either on or over the navigable waters of the United States. Under that rule, the list of recurring marine events requiring special local regulations or safety zones is updated with revisions, additional events, and removal of events that no longer take place within the Fifth Coast Guard District. The Fifth Coast Guard District area of responsibility is defined in 33 CFR 3.25.

The purpose of this rulemaking is to ensure the safety of persons, vessels and the navigable waters within close proximity to marine events and or fireworks displays before, during, and after the scheduled event. Publishing these regulatory updates in a single rulemaking promotes administrative efficiency and reduces costs involved in producing a separate rule for each individual recurring event. This action also provides the public with notice through publication in the **Federal Register** of future recurring marine events and fireworks displays and their accompanying regulations, special local regulations and safety zones. This rule provides separate tables for each Coast Guard Sector within the Fifth Coast Guard District. The Coast Guard issues this rulemaking under authority in 33 U.S.C. 1231; 33 U.S.C. 1233; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

IV. Discussion of Rule

Special Local Regulations

This rule adds 4 new special local regulations for marine events, removes 7 regulations and revises 18 previously established regulations for marine events listed in the Table to § 100.501. Other than changes to the dates and locations of certain events, the other provisions in 33 CFR 100.501 remain unchanged.

This rule provides additional information about regulated areas and the restrictions that apply to mariners and new terms including "Race Area", "Spectator Area" and "Buffer Zone". The 24 hour contact phone numbers are updated for Coast Guard Sectors Delaware Bay and North Carolina.

The Coast Guard revises regulations at 33 CFR 100.501 by adding 4 new special local regulations. The special local regulations are listed in Table 1, including reference by section as printed in the Table to § 100.501.

TABLE 1

[Special local regulated areas added to 33 CFR 100.501]

Table to § 100.501 section	Location
1. (b.)22	Choptank River, Cambridge, MD.
2. (b.)23	Breton Bay, Leonardtown, MD.
3. (b.)24	Patapsco River, Baltimore, MD.
4. (d.)1	Atlantic ICW, Lees Cut, Banks Channel, Motts Channel, surrounding Harbor Island, NC.

The Coast Guard amends regulations at 33 CFR 100.501 by disestablishing the following 7 special local regulated areas listed in Table 2.

TABLE 2

[Special local regulated areas removed from 33 CFR 100.501]

Date(s)	Event	Regulated area
1. September—2nd, 3rd or 4th Friday, Saturday and Sunday; October—1st Friday, Saturday and Sunday.	Sunset Lake Hydrofest	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
2. October—2nd Saturday and Sunday.	The Liberty Grand Prix	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
3. June—2nd, 3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday.	Thunder on the Narrows	All waters of Prospect Bay enclosed by the following points: Latitude 38°57′52″ N., longitude 076°14′48″ W., thence to latitude 38°58′02″ N., longitude 076°15′05″ W., thence to latitude 38°57′38″ N., longitude 076°15′29″ W., thence to latitude 38°57′28″ N., longitude 076°15′23″ W., thence to point of origin at latitude 38°57′52″ N., longitude 076°14′48″ W.
4. September—2nd, 3rd or 4th Friday, Saturday and Sunday. October—1st Friday, Saturday and Sunday.	Chesapeake Challenge/Solomons Offshore Grand Prix.	All waters of the Patuxent River, within boundary lines connecting the following positions; originating near north entrance of MD Route 4 bridge, latitude 38°19′45″ N., longitude 076°28′06″ W., thence southwest to south entrance of MD Route 4 bridge, latitude 38°19′24″ N., longitude 076°28′30″ W., thence south to a point near the shoreline, latitude 38°18′32″ N., longitude 076°28′14″ W., thence southeast to a point near the shoreline, latitude 38°17′38″ N., longitude 076°27′26″ W., thence northeast to latitude 38°18′00″ N., longitude 076°26′41″ W., thence northwest to latitude 38°18′59″ N., longitude 076°27′20″ W., located at Solomons, MD, thence continuing northwest and parallel to shoreline to point of origin.
5. June—1st Saturday and Sunday	Carolina Cup Regatta	The specified waters of Pasquotank River near Elizabeth City, NC.
6. August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	The specified waters of the Pamlico River including Chocowinity Bay, NC.
7. September—3rd and or 4th or last Sunday.	Crystal Coast Grand Prix	The specified waters of Bogue Sound, adjacent to Morehead City, NC.

This rule revises 18 preexisting special local regulations that involves change to marine event date(s) and/or coordinates. These events are listed in Table 3, with reference by section as printed in the Table to § 100.501.

TABLE 3

[Changes to special local regulation date(s) and coordinates]

Table to § 100.501 section	Location	Revision (date/coordinates)
1. (a.)4	N. Atlantic Ocean, Atlantic City, NJ	coordinates.
2. (a.)6	N. Atlantic Ocean, Seaside Heights—Normandy Beach, NJ	coordinates.
3. (a.)7	Manasquan River and N. Atlantic Ocean, Asbury Park—Seaside Park, NJ.	dates, coordinates.
4. (a.)8	N. Atlantic Ocean, Atlantic City, NJ	dates.
5. (a.)12	New Jersey Intracoastal Waterway, near Atlantic City, NJ	dates.
6. (b.)1	Severn River, Annapolis, MD	coordinates.
7. (b.)2	Severn River, Annapolis, MD	dates.
8. (b.)7	Severn River, Annapolis, MD	coordinates.
9. (b.)10	Nanticoke River, Sharptown, MD	coordinates.
10. (b.)17	Spa Creek, Severn River, Annapolis, MD	coordinates.
11. (b.)18	Patuxent River, Solomons, MD	dates.
12. (b.)19	N. Atlantic Ocean, Ocean City, MD	dates, coordinates.
13. (b.)20	N. Atlantic Ocean, Ocean City, MD	date, coordinates.
14. (c.)1	Sunset Creek, Hampton River, Hampton, VA	dates.
15. (c.)4	Rappahannock River, Layton, VA	coordinates.
16. (c.)6	Mill Creek, Hampton, VA	coordinates.
17. (c.)8	Back River, Poquoson, VA	dates, coordinates.
18. (c.)9	Mattaponi River, Wakema, VA	coordinates.

Based on the nature of marine events, large number of participants and spectators, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or mariners traversing through the regulated area. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes special local regulations for the time and location of each marine event.

This rule provides designated spectator areas for commercial small passenger vessels at certain marine event(s). The purpose of a commercial small passenger vessel spectator area is to ensure the safe operation of commercial vessels that carry a greater number of passengers onboard and operating within the widespread, high capacity spectator fleet at marine events. These spectator areas facilitate direct and unobstructed accesses for first responders should an emergency occur aboard one of the higher capacity commercial passenger vessels. Commercial passenger vessels holding a valid Certificate of Inspection issued under 46 CFR 114.110, and 175.110, (subchapter K or T vessels) are eligible for access to the designated spectator area as directed by the marine event Patrol Commander.

Owners or operators of vessels that meet the requirements of subchapter K or T vessels may request access to the Severn River spectator area for the U.S. Naval Academy Blue Angels Air Show by contacting the City of Annapolis Harbormaster Office, at telephone (410) 263–7973 or email at *harbormaster@annapolis.gov*. Application must be made no later than seven days prior to the date of the event. Applicants will be notified by the Captain of the Port or representative regarding status of applications generally the Friday before the date of the event.

Owners or operators of vessels that meet the requirements of subchapter K or T vessels may request access to the Patapsco River spectator area for the Baltimore Air Show by contacting Sail Baltimore at telephone (410) 522–7300 or email at *info@sailbaltimore.org*. Application must be made no later than ten days prior to the date of the event. Applicants will be notified by the Captain of the Port or representative regarding status of applications generally the Friday before the date of the event.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port (COTP), or designated Coast Guard Patrol Commander. The designated "Patrol Commander" includes Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on their behalf. On-scene patrol commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

Safety Zones

This rule adds 4 new safety zones, and revises 22 previously established safety zones listed in the Table to § 165.506. Other than changes to the dates and locations of certain safety zones, the other provisions in 33 CFR 165.506 remain unchanged.

The Coast Guard revises the regulations at 33 CFR 165.506 by adding 4 new safety zone locations to the permanent regulations listed in this section. The new safety zones are listed in Table 4, including reference by section as printed in the Table to § 165.506.

TABLE 4

[Safety zones added to 33 CFR 165.506]

Table to § 165.506 section	Location
1. (a.)17	N. Atlantic Ocean, Sea Isle City, NJ.
2. (a.)18	Rehoboth Bay, Dewey Beach, DE.

TABLE 4—Continued

[Safety zones added to 33 CFR 165.506]

Table to § 165.506 section	Location
3. (b.)27	Chester River, Kent Island Narrows, MD.
4. (b.)28	Susquehanna River, Havre de Grace, MD.

The rule revises 22 preexisting safety zones that involves change to event date(s) and coordinates. These revised safety zones are shown in Table 5, with reference by section as printed in the Table to § 165.506.

TABLE 5

[Changes to safety zone date(s) and coordinates]

Table to § 165.506 section	Location	Revision (date/coordinates)
1. (a.)1	N. Atlantic Ocean, Bethany Beach, DE	dates.
2. (a.)3	N. Atlantic Ocean, Rehoboth Beach, DE	dates.
3. (a.)4	N. Atlantic Ocean, Avalon, NJ	dates.
4. (a.)5	Barnegat Bay, Barnegat Township, NJ	dates.
5. (a.)6	N. Atlantic Ocean, Cape May, NJ	dates.
6. (a.)7	Delaware Bay, North Cape May, NJ	dates.
7. (a.)8	Great Egg Harbor Inlet, Margate City, NJ	dates.
8. (a.)9	Metedeconk River, Brick Township, NJ	dates.
9. (a.)10	N. Atlantic Ocean, Atlantic City, NJ	dates.
10. (a.)11	N. Atlantic Ocean, Ocean City, NJ	dates.
11. (a.)13	Little Egg Harbor, Parker Island, NJ	dates.
12. (a.)16	Delaware River, Philadelphia, PA	dates.
13. (b.)2	Severn River and Spa Creek, Annapolis, MD	coordinates.
14. (b.)4	Upper Potomac River, Washington, DC	dates/coordinates.
15. (b.)5	Northwest Harbor (East Channel), Patapsco River, MD	coordinates.
16. (b.)12	Potomac River, Fairview Beach, Charles County, MD	dates.
17. (b.)16	Susquehanna River, Havre de Grace, MD	dates.
18. (b.)20	Upper Potomac River, Washington, DC	dates.
19. (b.)22	Potomac River, Prince William County, VA	dates/coordinates.
20. (c.)9	North Atlantic Ocean, Virginia Beach, VA (safety zone A)	dates.
21. (c.)18	Cape Charles Harbor, Cape Charles, VA	dates.
22. (c.)23	Elizabeth River Eastern Branch, Norfolk, VA	dates.

Each year, organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the COTP or designated Coast Guard patrol commander on scene, as provided for in 33 CFR 165.23. This rule provides for the safety of life on navigable waters during the events. The regulatory text we are proposing appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the short amount of time that vessels will be restricted from regulated areas, and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications would also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these special local regulated areas and safety zones will only be enforced one to three times per year.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas or safety zones may be small entities, for the reasons stated in section IV.A above this rule would not have a significant economic impact on any vessel owner or operator. However this rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in these regulated areas during the times the zones are enforced.

These special local regulated areas and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of event participants and spectators. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the regulated area. Generally, blanket permission to enter, remain in, or transit through these regulated areas will be given, except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States. Some marine events by their nature may introduce potential for adverse impact on the safety or other interest of waterway users or waterfront infrastructure within or close proximity to the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. This section of the rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are not required for this section of the rule.

This rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are generally launched from or immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from barges or at the shoreline that generally rely on the use of navigable waters as a safety buffer. Fireworks displays may introduce potential hazards such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This section of the rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events within the Fifth Coast Guard District.

The following regulations apply to the marine events listed in the Table to § 100.501. These regulations will be effective annually, for the duration of each event listed in the Table to § 100.501. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander.* A Patrol Commander (PATCOM) is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(4) *Regulated area* as used in this section means an area where Special local regulations apply to a specific described waterway to include creeks, sounds, bays, rivers and oceans. Regulated areas include all waters of a specific body of water described with intent to define boundaries where Coast Guard enforces Special local regulations. Boundaries may be described from shoreline to shoreline, reference bridges or other fixed structures, by points and lines defined by latitude and longitude. All coordinates reference Datum: NAD 1983.

(b) *Marine Event Patrol.* The Coast Guard may assign a marine event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The marine event patrol and Patrol Commander may be contacted on VHF–FM Channel 16. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property. Only designated marine event participants and their vessels and official patrol vessels are authorized to enter the regulated area.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander or designated marine event patrol may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) *Race area.* This is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this part. Only event sponsor designated participants or designated participating vessels and official patrol vessels are allowed to enter the race area. Persons or vessel operators may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Patrol Commander on VHF–FM Channel 16.

(4) *Spectator area.* This is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. All spectator vessels shall be anchored or operate at a No Wake Speed within the designated spectator area. On scene designated PATCOM representatives will direct spectator vessels to the spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(5) *Buffer area.* This is a neutral zone that surrounds the perimeter of a Race Area or Marine Event Area within the regulated area described by this part. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This zone provides separation between a Race Area or

Marine Event Area and a specified Spectator Area or other vessels that are operating in the vicinity of the Special local regulated area for marine event.

(6) Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, spectators may enter the Spectator Area or must pass directly through the regulated area as instructed by PATCOM at safe speed and without loitering.

(d) *Contact information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the marine event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4940.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone North Carolina: (877) 229–0770 or (910) 362–4015.

(e) *Application for marine events.* The application requirements of § 100.15 of this part apply to all marine events listed in the Table to § 100.501. For information on applying for a marine event permit, contact the Captain of the Port for the area in which the marine event will occur, at the phone numbers listed above.

(f) *Enforcement periods.* The enforcement periods for each of the Special local regulations listed in the Table to § 100.501 of this section are subject to change, but the duration of enforcement would remain the same or nearly the same total amount of time as stated in its table. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

(g) *Regulations for specific marine events.* (1) Marine event (b.) 7, U.S. Naval Academy Blue Angels Air Show. Severn River spectator area; except for a vessel in an emergency situation, a vessel may not anchor or maintain station within the spectator area described in Table to 100.501 (b.) 7 without the permission of the Captain of the Port or designated Patrol Commander. The Captain of the Port has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR chapter I, subchapters K and T (46 CFR 114.110, and 175.110). Vessels that meet the requirements of this section may request access to the Severn River spectator area by contacting the City of Annapolis Harbormaster at (410) 263–7973 or email *harbormaster@annapolis.gov* to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 7 calendar days prior to the event date. Applicants will be notified by the Captain of the Port or representative regarding status of applications and further instructions. All vessels shall contact the Patrol Commander on VHF–FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by the Patrol Commander when entering the regulated area. The regulations for this event will restrict access to some of the anchorage grounds listed at 33 CFR 110.159, Annapolis Harbor, MD, specifically (2) Middle Ground Anchorage, (3) South Anchorage and (4) Naval Anchorage for Small Craft.

(2) Marine event (b.) 24, Baltimore Air Show. Patapsco River spectator area; except for a vessel in an emergency situation, a vessel may not anchor or hold station within the spectator area described in Table to 100.501 (b.) 24 without the permission of the Captain of the Port or designated Patrol Commander. The Captain of the Port has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR chapter I, subchapters K and T (46 CFR 114.110, and 175.110). Vessels that meet the requirements of this section may request access to the Patapsco River spectator area by contacting the Sail Baltimore at (410) 522–7300 or email *info@sailbaltimore.org* to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 10 calendar days prior to the event date. Applicants will be notified by the Captain of the Port or representative regarding status of applications and further instructions. All vessels shall contact the Patrol Commander on VHF–FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by the Patrol Commander when entering the regulated area.

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey.	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: The area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N.; and bounded to the west by a line that runs along longitude 074°37′00″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Event	Sponsor	Location/special local regulation area
2	May—3rd Sunday; September—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N., longitude 075°35′25.6″ W., thence southeast to latitude 39°34′57.3″ N., longitude 075°33′23.1″ W., thence southwest to latitude 39°34′11.9″ N., longitude 075°34′28.6″ W., thence northwest to latitude 39°35′52.4″ N., longitude 075°36′33.9″ W., thence to point of origin.
3	June—last Saturday	Westville Parade of Lights.	Borough of Westville and Westville Power Boat.	All waters of Big Timber Creek in Westville, New Jersey from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River.
4	June—4th Sunday	OPA Atlantic City Grand Prix.	Offshore Performance Assn. (OPA).	Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas: Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′31″ N., longitude 074°24′45″ W., thence east to latitude 39°21′08″ N., longitude 074°24′32″ W., thence southwest to latitude 39°20′21.5″ N., longitude 074°27′04.6″ W., thence northwest to latitude 39°20′45.6″ N., longitude 074°27′11.6″ W., thence northeast parallel to shoreline to point of origin. Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′46″ N., longitude 074°24′35″ W., thence east to latitude 39°21′06″ N., longitude 074°24′06″ W., thence southwest to latitude 39°20′06″ N., longitude 074°27′20″ W., thence northwest to latitude 39°20′40.6″ N., longitude 074°27′31.5″ W., thence northeast along the shoreline to point of origin. Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′05.6″ N., longitude 074°24′05.8″ W., thence east to latitude 39°20′52.1″ N., longitude 074°23′53.9″ W., thence southeast to latitude 39°19′51.6″ N., longitude 074°27′16.2″ W., thence northwest to latitude 39°20′05.6″ N., longitude 074°27′20″ W., thence northeast to point of origin.
5	July—on or about July 4th.	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
6	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas: Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°59′41″ N., longitude 074°03′20″ W., thence east to latitude 39°59′28″ N., longitude 074°02′15″ W., thence southwest to latitude 39°56′41″ N., longitude 074°02′55″ W., thence west to latitude 39°56′45″ N., longitude 074°03′52″ W., thence north parallel to shoreline to point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
				Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°00′00″ N., longitude 074°03′31″ W., thence east to latitude 39°59′41″ N., longitude 074°02′00″ W., thence southwest to latitude 39°56′28″ N., longitude 074°02′43″ W., thence west to latitude 39°56′31″ N., longitude 074°04′10″ W., thence north along the shoreline to point of origin. Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°59′41″ N., longitude 074°01′59″ W., thence east to latitude 39°59′39″ N., longitude 074°01′48″ W., thence southwest to latitude 39°56′27″ N., longitude 074°02′29″ W., thence west to latitude 39°56′28″ N., longitude 074°02′43″ W., thence north to point of origin.
7	May—3rd weekend, Saturday and Sunday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas: Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′40″ N., longitude 074°01′59″ W., thence southeast to latitude 40°05′34″ N., longitude 074°01′40″ W., thence south to latitude 40°03′54″ N., longitude 074°02′07″ W., thence west to latitude 40°03′56″ N., longitude 074°02′24″ W., thence north and parallel to shoreline to point of origin. Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′55″ N., longitude 074°02′02″ W., thence southeast to latitude 40°05′44″ N., longitude 074°01′28″ W., thence south to latitude 40°03′42″ N., longitude 074°02′01″ W., thence west to latitude 40°03′44″ N., longitude 074°02′36″ W., thence north along the shoreline to point of origin. Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′44″ N., longitude 074°01′27″ W., thence east to latitude 40°05′42″ N., longitude 074°01′20″ W., thence southwest to latitude 40°03′42″ N., longitude 074°01′55″ W., thence west to latitude 40°03′42″ N., longitude 074°02′01″ W., thence north to point of origin.
8	August—3rd Tuesday and Wednesday.	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: From a point along the shoreline at latitude 39°21′31″ N., longitude 074°25′04″ W., thence southeasterly to latitude 39°21′08″ N., longitude 074°24′48″ W., thence southwesterly to latitude 39°20′16″ N., longitude 074°27′17″ W., thence northwesterly to a point along the shoreline at latitude 39°20′44″ N., longitude 074°27′31″ W., thence northeasterly along the shoreline to latitude 39°21′31″ N., longitude 074°25′04″ W.
9	October—1st Monday (Columbus Day).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
10	December 31st (New Year's Eve).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
11	September—2nd or 3rd Sunday.	Ocean City Air Show	Ocean City, NJ	All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; Latitude 39°15′57″ N., longitude 074°35′09″ W. thence northeast to latitude 39°16′34″ N., longitude 074°33′54″ W. thence southeast to latitude 39°16′17″ N., longitude 074°33′29″ W. thence southwest to latitude 39°15′40″ N., longitude 074°34′46″ W. thence northwest to point of origin, near Ocean City, NJ.
12.	June—4th Sunday and August 2nd or 3rd Sunday. September—2nd or 3rd Saturday and Sunday.	Atlantic City International Triathlon.	Atlantic City, NJ	All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; Latitude 39°21′20″ N., longitude 074°27′18″ W. thence northeast to latitude 39°21′27.47″ N., longitude 074°27′10.31″ W. thence northeast to latitude 39°21′33″ N., longitude 074°26′57″ W. thence northwest to latitude 39°21′37″ N., longitude 074°27′03″ W. thence southwest to latitude 39°21′29.88″ N., longitude 074°27′14.31″ W. thence south to latitude 39°21′19″ N., longitude 074°27′22″ W. thence east to latitude 39°21′18.14″ N., longitude 074°27′19.25″ W. thence north to point of origin, near Atlantic City, NJ.
(b.) Coast Guard Sector Baltimore—COTP Zone				
1	March—4th or last Saturday; or April—1st Saturday.	USNA Safety at Sea Seminar.	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by the Naval Academy (SR–450) Bridge and bounded to the southeast by a line drawn from Triton Light at latitude 38°58′53.0″ N., longitude 076°28′34.4″ W., thence easterly to Carr Point, MD at latitude 38°58′58.7″ N., longitude 076°27′38.9″ W.
2	April and May—every Friday, Saturday and Sunday.	USNA Crew Races	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′58″ N., longitude 076°31′32″ W. thence to the north shoreline at latitude 39°01′11″ N., longitude 076°31′10″ W., The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W., thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W.
3	July—3rd, 4th or last Saturday, or Sunday.	Middle River Dinghy Poker Run.	Norris Trust Foundation	The waters of Middle River, from shoreline to shoreline, within an area bounded to the north by a line drawn along latitude 39°19′33″ N., and bounded to the south by a line drawn from latitude 39°17′24.4″ N., longitude 076°23′53.3″ W., to latitude 39°18′06.4″ N., longitude 076°23′10.9″ W., located in Baltimore County, at Essex, MD.
4	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N., longitude 075°54′00″ W., thence westerly to latitude 38°18′00″ N., longitude 075°55′00″ W., thence northerly to latitude 38°20′00″ N., longitude 075°53′48″ W., thence easterly to latitude 38°19′42″ N., longitude 075°52′54″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
5	May—Saturday before Memorial Day.	Chestertown Tea Party Re-enactment.	Chestertown Tea Party Festival.	All waters of the Chester River, within a line connecting the following positions: Latitude 39°12′27″ N., longitude 076°03′46″ W.; thence to latitude 39°12′19″ N., longitude 076°03′53″ W.; thence to latitude 39°12′15″ N., longitude 076°03′41″ W.; thence to latitude 39°12′26″ N., longitude 076°03′38″ W.; thence to the point of origin at latitude 39°12′27″ N., longitude 076°03′46″ W., located at Chestertown, MD.
6	May—3rd Friday, Saturday and Sunday. June 2nd or 3rd Friday, Saturday and Sunday.	Washington, D.C. Dragon Boat Festival.	Washington, D.C. Dragon Boat Festival, Inc.	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge, located at Georgetown, Washington, DC.
7	May—Tuesday and Wednesday before Memorial Day (observed).	USNA Blue Angels Air Show.	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38″ N., longitude 076°31′02″ W., thence to the north shoreline at latitude 39°00′52.7″ N., longitude 076°30′46″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W., thence southeast to a point 1500 yards ESE of Chinks Point, MD at latitude 38°57′41″ N., longitude 076°27′36″ W., thence northeast to Greenbury Point at latitude 38°58′27.7″ N., longitude 076°27′16.4″ W., Spectator area: All waters of the Severn River bounded by a line commencing at latitude 38°58′38.2″ N., longitude 076°27′56.9″ W., thence southeast to latitude 38°58′24.9″ N., longitude 076°27′47.6″ W., thence west to latitude 38°58′22.3″ N., longitude 076°27′54.5″ W., thence northwest to latitude 38°58′28.3″ N., longitude 076°28′11″ W., thence east to point of origin. This area is located generally in the center portion of Middle Ground Anchorage, Severn River, MD. This spectator area is restricted to certain vessels as described in § 100.501 paragraph (g)(1).
8	June—2nd Sunday	The Great Chesapeake Bay Swim.	The Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00′36″ N., longitude 076°23′05″ W., and thence eastward to the eastern shoreline at latitude 38°59′14″ N., longitude 076°20′00″ W., and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′16″ N., longitude 076°24′30″ W., and thence eastward to the eastern shoreline at latitude 38°58′38.5″ N., longitude 076°20′06″ W.
9	June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday.	Maryland Swim for Life	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N., near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N., by the Maryland S.R. 213 Highway Bridge.
10	June—last Saturday and Sunday or July—2nd Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Carolina Virginia Racing Assn.	Regulated enforcement area—All waters of the Nanticoke River encompassed within the following areas:

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Event	Sponsor	Location/special local regulation area
				Race area: All waters of the Nanticoke River commencing at a point at latitude 38°33′02″ N., longitude 075°42′44″ W., thence northwest to latitude 38°33′03″ N., longitude 075°42′45″ W., thence southwest to latitude 38°32′46″ N., longitude 075°43′08″ W., thence southeast to latitude 38°32′45″ N., longitude 075°43′07″ W., thence northeast to the point of origin. Race boat/participant access area: Located southwest and down river from the race area. From shoreline to shoreline and bound by a line commencing at latitude 38°32′37″ N., longitude 075°43′14″ W., thence northwest across the river to latitude 38°32′41.5″ N., longitude 075°43′19.3″ W., thence northeast to latitude 38°32′46″ N., longitude 075°43′14″ W., thence southeast along the Route 313 bridge to latitude 38°32′41.7″ N., longitude 075°43′08.2″ W., thence southwest to point of origin. Buffer area: All waters of the Nanticoke River bounded by a line connecting the following points: Commencing at latitude 38°33′02″ N., longitude 075°42′39″ W., thence southwest tolatitude 38°32′42″ N., longitude 075°43′07″ W., thence northwest to latitude 38°32′47″ N., longitude 075°43′13″ W., thence northeast to latitude 38°33′07.5″ N., longitude 75°42′46″ W., thence southwest to the point of origin. Spectator area: All waters of the Nanticoke River bounded by the following points: Located northeast and up-river from the race area. From shoreline to shoreline and bound by a line commencing at latitude 38°33′08.5″ N., longitude 075°42′33.6″ W., thence southeasterly along the shoreline to latitude 38°33′02″ N., longitude 075°42′39″ W., thence across the river northwest to latitude 38°33′07.4″ N., longitude 075°42′46″ W., thence the northeast along the shoreline to latitude 38°33′13″ N., longitude 075°42′41.5″ W., thence southeast across the river to point of origin.
11	May/June—Saturday and Sunday after Memorial Day (observed); and October—1st Saturday and Sunday.	Rock Hall and Waterman's Triathlon Swims.	Kinetic Endeavors, LLC	The waters of Rock Hall Harbor from shoreline to shoreline, bounded by a line drawn from latitude 39°07′59″ N., longitude 076°15′03″ W., to latitude 39°07′50″ N., longitude 076°14′41″ W., located at the entrance to Rock Hall, MD.
12	September—2nd Saturday or the Saturday after Labor Day. (biennial, even years).	Catholic Charities Dragon Boat Races.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, within the Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W., located at Baltimore, MD.
13	June—3rd, 4th or last Saturday or Sunday.	Baltimore Dragon Boat Challenge.	Baltimore Dragon Boat Club.	The waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′ W., and bounded on the west by a line drawn along longitude 076°36′ W.
14	May—2nd, 3rd 4th or last Saturday. June—1st, 2nd or 3rd Saturday.	Oxford-Bellevue Sharkfest Swim.	Enviro-Sports Productions Inc.	The waters of the Tred Avon River from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N., longitude 076°10′45″ W., thence south to latitude 38°41′37″ N., longitude 076°10′26″ W., and bounded on the west by a line drawn from latitude 38°41′58″ N., longitude 076°11′04″ W., thence south to latitude 38°41′25″ N., longitude 076°10′49″ W., thence east to latitude 38°41′25″ N., longitude 076°10′30″ W., located at Oxford, MD.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Event	Sponsor	Location/special local regulation area
15	June—1st Sunday	Washington's Crossing: Swim Across the Potomac.	Wave One Swimming	The waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn that originates at Jones Point Park, VA at the west shoreline latitude 38°47′35″ N., longitude 077°02′22″ W., thence east to latitude 38°47′2″ N., longitude 077°00′58″ W., at east shoreline near National Harbor, MD. The regulated area is bounded to the south by a line drawn originating at George Washington Memorial Parkway highway overpass and Cameron Run, west shoreline latitude 38°47′23″ N., longitude 077°03′03″ W., thence east to latitude 38°46′52″ N., longitude 077°01′13″ W., at east shoreline near National Harbor, MD.
16	October—last Saturday; or November—1st or 2nd Saturday.	The MRE Tug of War	Maritime Republic of Eastport.	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N., longitude 076°29′03.8″ W., on the Annapolis shoreline to a position at latitude 38°58′26.4″ N., longitude 076°28′53.7″ W., on the Eastport shoreline.
17	December—2nd Saturday.	Eastport Yacht Club Lights Parade.	Eastport Yacht Club	All waters of Spa Creek and the Severn River, shoreline to shoreline, bounded on the east by a line drawn from Triton Light, at latitude 38°58′53.1″ N., longitude 076°28′34.3″ W., thence southwest to Horn Point, at 38°58′20.9″ N., longitude 076°28′27.1″ W., Annapolis, MD.
18	Memorial Day weekend—Thursday, Friday, Saturday and Sunday; or Labor Day weekend—Thursday, Friday, Saturday and Sunday; or October—last Thursday, Friday, Saturday and Sunday.	NAS Patuxent River Air Expo.	NAS Patuxent River	All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N., longitude 076°25′47″ W.; thence to latitude 38°17′47″ N., longitude 076°26′00″ W.; thence to latitude 38°18′09″ N., longitude 076°25′40″ W.; thence to latitude 38°18′00″ N., longitude 076°25′25″ W., located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N., longitude 076°23′43″ W.; to latitude 38°18′16″ N., longitude 076°22′35″ W.; thence to latitude 38°18′12″ N., longitude 076°22′37″ W.; thence to latitude 38°18′36″ N., longitude 076°23′46″ W., located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland.
19	May—1st or 2nd Saturday and Sunday; October—1st or 2nd Saturday and Sunday.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	Regulated enforcement area: All waters of North Atlantic Ocean bounded within the following designated areas. Race area: All waters of North Atlantic Ocean commencing at latitude 38°20′06.33″ N. longitude 075°04′39.09″ W., thence east to latitude 38°20′03.75″ N. longitude 075°04′27.46″ W., thence north and parallel to Ocean City shoreline to latitude 38°21′32.00″ N. longitude 075°03′46.57″ W.; thence west to shoreline at latitude 38°21′34.58″ N. longitude 075°04′00.95″ W.; thence south to the point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
				Buffer area: 500 yards in all directions surrounding the "Race area". All waters of North Atlantic Ocean commencing at a point near the shoreline at latitude 38°21′52″ N. longitude 075°04′09″ W., thence east to latitude 38°21′44″ N. longitude 075°03′21″ W., thence southwest and parallel to Ocean City shoreline latitude 38°19′47″ N. longitude 075°04′15″ W., thence west to the shoreline at latitude 38°19′55″ N. longitude 075°04′57″ W. Spectator area: Vessel operation restricted to operate at No Wake Speed. All waters of North Atlantic Ocean commencing at latitude 38°20′01″ N. longitude 075°04′08.4″ W., thence east to latitude 38°19′58″ N. longitude 075°03′57″ W., thence north and parallel to Ocean City shoreline to latitude 38°21′26″ N. longitude 075°03′16″ W.; thence west to shoreline at latitude 38°21′29″ N. longitude 075°03′27.8″ W., thence south to the point of origin.
20	June—1st, 2nd or 3rd Thursday, Friday, Saturday and Sunday.	Ocean City Air Show	Town of Ocean City, Maryland.	All waters of the North Atlantic Ocean within an area bounded by the following coordinates: latitude 38°21′48.7″ N., longitude 075°04′10″ W.; latitude 38°21′31.5″ N., longitude 075°03′11.4″ W.; latitude 38°19′22.6″ N., longitude 075°04′09.5″ W.; and latitude 38°19′38.5″ N., longitude 075°05′05.4″ W., located at Ocean City, MD.
21	June—3rd, 4th or last Sunday.	Coastal Aquatics Swim Team Open Water Summer Shore Swim.	Coastal Aquatics Swim Team.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N., longitude 075°54′00″ W., thence westerly to latitude 38°18′00″ N., longitude 075°55′00″ W., thence northerly to latitude 38°20′00″ N., longitude 075°53′48″ W., thence easterly to latitude 38°19′42″ N., longitude 075°52′54″ W.
22	Memorial Day weekend (Saturday and Sunday). July—last Saturday or Sunday.	Cambridge Classic Powerboat Race.	Cambridge Power Boat Regatta Association.	Regulated enforcement area: All waters within of Hambrooks Bay and Choptank River bounded within the following described areas. Race area: All waters within Hambrooks Bay bound to the east by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N., longitude 076°04′50.1″ W., thence south to Great Marsh Point located at latitude 38°35′06″ N., longitude 076°04′40.6″ W. Buffer area: All waters within Hambrooks Bay (with the exception of the Race Area designated by the marine event sponsor) bound to the east by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N., longitude 076°04′50.1″ W., thence south to Great Marsh Point located at latitude 38°35′06″ N., longitude 076°04′40.6″ W. Spectator area: All waters of the Choptank River, from Great Marsh Point, commencing at latitude 38°35′06″ N., longitude 076°04′40.4″ W., thence north near the terminus of breakwall, latitude 38°35′29.8″ N., longitude 076°04′51″ W., thence northwest parallel with breakwall to latitude 38°35′34.5″ N. longitude 076°05′12.5″ W.; thence northeast to latitude 38°35′40.2″ N., longitude 076°05′09.8″ W., thence east to latitude 38°35′33.7″ N., longitude 076°04′41.6″ W., thence southeast to latitude 38°35′07.9″ N., longitude 076°04′31.4″ W., thence west to the point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Event	Sponsor	Location/special local regulation area
23	July—4th or last Saturday and Sunday;.	Southern Maryland Boat Club Summer Regatta.	Southern Maryland Boat Club.	All waters of Breton Bay, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude-38°16′43″ N., and bounded to the west by a line drawn along longitude 076°38′29.5″ W., located at Leonardtown, MD. Race area: The race area is rectangular in shape measuring approximately 200 yards by 1000 yards. The area is bounded by a line commencing at position latitude 38°17′07.2″ N., longitude 076°38′17.9″ W.; thence southeast to latitude 38°16′53.6″ N., longitude 076°37′43.7″ W.; thence southwest to latitude 38°16′48.6″ N., longitude 076°37′46.8″ W.; thence northwest to latitude 38°17′02.3″ N., longitude 076°38′21.1″ W.; thence northeast to point of origin. Buffer area: The area surrounds the entire race area described in the preceding paragraph of this section. This area is rectangular in shape and provides a buffer of approximately 120 yards around the perimeter of the race area. The area is bounded by a line commencing at position latitude 38°17′11.7″ N., longitude 076°38′19.5″ W.; thence southeast to latitude 38°16′55.6″ N., longitude 076°37′37.5″ W.; thence southwest to latitude 38°16′43.7″ N., longitude 076°37′45″ W.; thence northwest to latitude 38°17′00.3″ N., longitude 076°38′27.4″ W.; thence northeast to point of origin. Spectator area: A. The area is bounded by a line commencing at position latitude 38°17′09.7″ N., longitude 076°38′06.3″ W.; thence southeast to latitude 38°17′05″ N., longitude 076°37′54″ W.; thence southwest to latitude 38°17′02.2″ N., longitude 076°37′53.8″ W.; thence northwest to latitude 38°17′08.5″ N., longitude 076°38′10.1″ W.; thence northeast to point of origin. B. The area is bounded by a line commencing at position latitude 38°17′02.2″ N., longitude 076°37′44.1″ W.; thence southeast to latitude 38°16′59″ N., longitude 076°37′35.9″ W.; thence southwest to latitude 38°16′56.1″ N., longitude 076°37′37.6″ W.; thence northwest to latitude 38°16′59.9″ N., longitude 076°37′47.5″ W.; thence northeast to point of origin. C. The area is bounded by a line commencing at position latitude 38°16′57.3″ N., longitude 076°38′20.7″ W.; thence southeast to latitude 38°16′49.3″ N., longitude 076°38′00.2″ W.; thence southwest to latitude 38°16′47.9″ N., longitude 076°38′01.1″ W.; thence northwest to latitude 38°16′55.7″ N., longitude 076°38′21.8″ W.; thence northeast to point of origin. D. The area is bounded by a line commencing at position latitude 38°16′47″ N., longitude 076°37′54.5″ W.; thence southeast to latitude 38°16′44.3″ N., longitude 076°37′47.2″ W.; thence southwest to latitude 38°16′43.2″ N., longitude 076°37′47.1″ W.; thence northwest to latitude 38°16′43.3″ N., longitude 076°37′57.9″ W.; thence northeast to point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
24	October—Thursday, Friday, Saturday and Sunday after Columbus Day (observed) (biennial, even years)	Baltimore Air Show	Star-Spangled 200, Inc	Regulated area: All waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16′00″ N., longitude 076°36′30″ W.; thence east to latitude 39°16′00″ N., longitude 076°33′00″ W.; thence south to latitude 39°14′30″ N., longitude 076°33′00″ W.; thence west to latitude 39°14′30″ N., longitude 076°36′30″ W.; thence north to point of origin, located between Port Covington and Seagirt Marine Terminal, Baltimore, MD. Spectator Area: All waters of Patapsco River located between the north boundary defined by a line drawn from the vicinity of North Locust Point Marine Terminal, Pier 1 thence east to Canton Industrial area, Pier 5; the south boundary is defined by a line drawn from vicinity of Whetstone Point thence east to Lazaretto Point. This area is located generally where Northwest Harbor, East Channel, joins Patapsco River, Fort McHenry Channel, near Fort McHenry National Monument, Baltimore, MD. This area is bound by a line to the north commencing at position latitude 39°16′01″ N., longitude 076°34′46″ W.; thence east to latitude 39°16′01″ N., longitude 076°34′09″ W.; and bound by a line to the south commencing at position latitude 39°15′39″ N., longitude 076°35′23″ W.; thence east to latitude 39°15′26″ N., longitude 076°34′03″ W. This spectator area is restricted to certain vessels as described in § 100.501 paragraph (g)(2).
(c.) Coast Guard Sector Hampton Roads—COTP Zone				
1	May—last Friday, Saturday and Sunday and/or June—1st Friday, Saturday and Sunday. October—3rd and 4th weekend.	Blackbeard Festival, Battle of Hampton.	City of Hampton	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the I–64 Bridge over the Hampton River and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03″ N., longitude 76°20′26″ W., to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N., longitude 76°20′32″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48″ N., longitude 76°20′22″ W., across the river to the eastern shore at latitude 37°01′44″ N., longitude 76°20′13″ W., and to the north by the I–64 Bridge over the Hampton River. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26″ N., longitude 76°20′24″ W., latitude 37°01′22″ N., longitude 76°20′26″ W., and latitude 37°01′22″ N., longitude 76°20′23″ W. The anchorage area will be marked by orange buoys.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
2	June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd	The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51″ N., longitude 076°18′09″ W. and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00″ N., longitude 076°17′52″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50″ N., longitude 076°18′10″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29″ N., longitude 076°17′52″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10″ N., longitude 076°17′47″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08″ N., longitude 076°17′39″ W.; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W.
3	June—2nd or 3rd Saturday.	Cock Island Race	Portsmouth Boat Club & City of Portsmouth, VA.	The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51″ N., longitude 076°18′09″ W., and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00″ N., longitude 076°17′52″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50″ N., longitude 076°18′10″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29″ N., longitude 076°17′52″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10″ N., longitude 076°17′47″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08″ N., longitude 076°17′39″ W.; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W.
4	June—last Saturday or July—1st Saturday.	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	All waters of Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W., and bounded on the east by a line running along longitude

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Event	Sponsor	Location/special local regulation area
				Buffer area: The waters of Rappahannock River extending 200 yards outwards from east and west boundary lines described in this section. Spectator area: The regulated area cannot accommodate spectator vessels due to limitations posed by shallow water and insufficient waters to provide adequate separation between race course and other vessels. Spectators are encouraged to view the race from points along the adjacent shoreline.
5	July—last Wednesday and following Friday; or August—1st Wednesday and following Friday.	Pony Penning Swim	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N., longitude 075°22′40″ W., thence south to latitude 37°54′50″ N., longitude 075°22′46″ W.; and to the southwest by a line drawn from latitude 37°54′54″ N., longitude 075°23′00″ W., thence east to latitude 37°54′49″ N., longitude 075°22′49″ W.
6	August 1st or 2nd Friday, Saturday and Sunday.	Hampton Cup Regatta	Hampton Cup Regatta Boat Club.	Regulated enforcement area—All waters of Mill Creek, adjacent and north of Fort Monroe, Hampton, Virginia. The regulated area includes the following areas: Race area: All waters within the following boundaries: To the north, a line drawn along latitude 37°01′03″ N., to the east a line drawn along longitude 076°18′30″ W., to the south a line drawn parallel with the Fort Monroe shoreline, and west boundary is parallel with the Route 258—East Mercury Boulevard Bridge-causeway. Buffer area A: All waters bounded by a line connecting the following points: Latitude 37°00′43″ N., longitude 076°18′54″ W., thence north along the causeway to latitude 37°01′03″ N., longitude 076°18′52″ W., thence southwest to latitude 37°01′00″ N., longitude 076°18′54″ W., thence south to Route 143 causeway at latitude 37°00′44″ N., longitude 076°18′58″ W., thence east along the shoreline to point of origin. Buffer area B: All waters bounded by a line connecting the following points: Latitude 37°01′08″ N., longitude 076°18′49″ W., thence east to latitude 37°01′08″ N., longitude 076°18′23″ W., thence south to latitude 37°00′33″ N., longitude 076°18′23″ W., thence west to latitude 37°00′33″ N., longitude 076°18′30″ W., thence north to latitude 37°01′03″ N., longitude 076°18′30″ W., thence west to latitude 37°01′03″ N., longitude 076°18′49″ W., thence north to point of origin. Spectator area: All waters bounded by a line connecting the following points: Latitude 37°01′08″ N., longitude 076°18′23″ W., thence east to latitude 37°01′08″ N., longitude 076°18′14″ W., thence south to latitude 37°00′54″ N., longitude 076°18′14″ W., thence southwest to latitude 37°00′37″ N., longitude 076°18′23″ W., thence north to point of origin.
7	September 1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Hampton Virginia Bay Days Festival.	Hampton Bay Days Inc	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the I–64 Bridge over the Hampton River and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03″ N., longitude 076°20′26″ W., to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N., longitude 076°20′32″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
8	September—last Sunday or October—1st or 2nd Sunday.	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia. Race area: The area is bounded on the north by a line drawn along latitude 37°06′30″ N., bounded on the south by a line drawn along latitude 37°06′15″ N., bounded on the east by a line drawn along longitude 076°18′52″ W., and bounded on the west by a line drawn along longitude 076°19′30″ W. Buffer area: The waters of Back River extending 200 yards outwards from east and west boundary lines, and 100 yards outwards from the north and south boundary lines described in this section. Spectator area: Is located along the south boundary line of the buffer area described in this section and continues to the south for 300 yards.
9	June—3rd Saturday and Sunday or 4th Saturday and Sunday.	Mattaponi Drag Boat Race.	Mattaponi Volunteer Rescue Squad and Dive Team.	All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W., near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W., just north of Wakema, Virginia. Buffer area: The waters of Mattaponi River extending 200 yards outwards from east and west boundary lines described in this section. Spectator area: The regulated area cannot accommodate spectator vessels due to limitations posed by shallow water and insufficient waters to provide adequate separation between race course and other vessels. Spectators are encouraged to view the race from points along the adjacent shoreline.
(d.) Coast Guard Sector North Carolina—COTP Zone				
1	September—4th or last Saturday and or Sunday.	Swim the Loop and Motts Channel Sprint.	Without Limits Coaching, Inc.	All waters surrounding Harbor Island, NC including Intracoastal waterway, Lees Cut, Banks Channel and Motts Channel. Enforcement area extends approximately 100 yards from the shoreline of Harbor Island and is bounded by a line connecting the following points; latitude 34°12′55″ N., longitude 077°48′59″ W., thence northeast to latitude 34°13′16″ N., longitude 077°48′39″ W. thence southeast to latitude 34°13′06″ N., longitude 077°48′18″ W., thence east to latitude 34°13′12″ N., longitude 077°47′41″ W., thence southeast to latitude 34°13′06″ N., longitude 077°47′33″ W., thence south to latitude 34°12′31″ N., longitude 077°47′47″ W., thence southwest to latitude 34°12′11″ N., longitude 077°48′01″ W., thence northwest to latitude 34°12′29″ N., longitude 077°48′29″ W., thence north to latitude 34°12′44″ N., longitude 077°48′32″ W., thence northwest to point of origin.
2	September—3rd, 4th or last Saturday; October—last Saturday; November—1st and or 2nd Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at latitude 34°12′18″ N., longitude 077°48′10″ W., to Wrightsville Channel Day beacon 25 (LLNR 28080), located at latitude 34°12′51″ N., longitude 77°48′53″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Event	Sponsor	Location/special local regulation area
3	August—2nd Saturday ..	The Crossing	Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, AKA O'SAIL.	All waters of Lake Gaston, from shoreline to shoreline, directly under the length of Eaton Ferry Bridge (NC State Route 903), latitude 36°31′06″ N., longitude 077°57′37″ W., bounded to the west by a line drawn parallel and 100 yards from the western side of Eaton Ferry Bridge near Littleton, NC.

[1] As noted in paragraph (f) of this section, the enforcement period for each of the listed special local regulations is subject to change.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.506 [Amended]

■ 4. Revise § 165.506 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

(a) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) The following regulations apply to the fireworks safety zones listed in the Table to § 165.506. These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather, the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Coast Guard Patrol Commander or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) *Notification.* (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Contact information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4940.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (877) 229–0770 or (910) 362–4015.

(d) *Enforcement periods.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard side is on-scene or a "FIREWORKS—DANGER—STAY AWAY" sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene. The enforcement periods for each Safety Zone in the Table to § 165.506 of this section are subject to change, but the duration of enforcement would remain the same or nearly the same total amount of time as stated in its table. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Location	Safety zone—regulated area
(a.) Coast Guard Sector Delaware Bay—COTP Zone			
1	July 2nd, 3rd, 4th or 5th	North Atlantic Ocean, Bethany Beach, DE; Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N., longitude 075°03′15″ W., adjacent to shoreline of Bethany Beach, DE.
2	Labor Day	Indian River Bay, DE; Safety Zone.	All waters of the Indian River Bay within a 700 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N., longitude 075°08′18″ W.
3	July 2nd, 3rd or 4th	North Atlantic Ocean, Rehoboth Beach, DE; Safety Zone.	All waters of the North Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N., longitude 075°04′21″ W., approximately 400 yards east of Rehoboth Beach, DE.
4	July 2nd, 3rd, 4th or 5th	North Atlantic Ocean, Avalon, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N., longitude 074°42′02.15″ W., in the vicinity of the shoreline at Avalon, NJ.
5	July 2nd, 3rd, or 4th, or September 1st—2nd Saturday.	Barnegat Bay, Barnegat Township, NJ; Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N., longitude 074°11′21″ W., approximately 500 yards north of Conklin Island, NJ.
6	July 2nd, 3rd, 4th or 5th	North Atlantic Ocean, Cape May, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N., longitude 074°55′26″ W., immediately adjacent to the shoreline at Cape May, NJ.
7	July 2nd, 3rd, 4th or 5th	Delaware Bay, North Cape May, NJ; Safety Zone.	All waters of the Delaware Bay within a 360 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N., longitude 074°58′30″ W.
8	July 2nd, 3rd, 4th or 5th. August—3rd Sunday.	Great Egg Harbor Inlet, Margate City, NJ; Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N., longitude 074°31′28″ W., on the Intracoastal Waterway near Margate City, NJ.
9	July 2nd, 3rd, 4th or 5th. August every Thursday; September 1st Thursday.	Metedeconk River, Brick Township, NJ; Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N., longitude 074°06′42″ W., near the shoreline at Brick Township, NJ.
10	July—2nd, 3rd, 4th or 5th	North Atlantic Ocean, Atlantic City, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N., longitude 074°25′58″ W., and within 500 yard radius of a fireworks barge located at latitude 39°21′12″ N., longitude 074°25′06″ W., near the shoreline at Atlantic City, NJ.
11	July 2nd, 3rd, 4th or 5th. October—1st or 2nd Saturday.	North Atlantic Ocean, Ocean City, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N., longitude 074°33′54″ W., in the vicinity of the shoreline at Ocean City, NJ.
12	May—4th Saturday	Barnegat Bay, Ocean Township, NJ; Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N., longitude 074°10′46″ W.
13	July 2nd, 3rd, 4th or 5th	Little Egg Harbor, Parker Island, NJ; Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N., longitude 074°14′43″ W., approximately 100 yards north of Parkers Island.
14	September—3rd Saturday	Delaware River, Chester, PA; Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N., longitude 075°22′42″ W.
15	September—3rd Saturday	Delaware River, Essington, PA; Safety Zone.	All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N., longitude 075°18′57″ W.
16	July 2nd, 3rd, 4th or 5th; Columbus Day; December 31st, January 1st.	Delaware River, Philadelphia, PA; Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29″.1 N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge.

Table to § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Location	Safety zone—regulated area
17	July 2nd, 3rd, 4th or 5th	N. Atlantic Ocean, Sea Isle City, NJ; Safety Zone.	All waters of N. Atlantic Ocean within a 350 yard radius of a fireworks barge located approximately at position latitude 39°08′49.5″ N., longitude 074°41′25.1″ W., near Sea Isle City, NJ.
18	April 8th; July 2nd, 3rd, 4th or 5th; December 31st.	Rehoboth Bay, DE; Safety Zone.	All waters within a 500 yard radius of a fireworks barge located at position latitude 38°41′21″ N., longitude 075°05′00″ W. at Rehoboth Bay near Dewey Beach, DE.
(b.) Coast Guard Sector Baltimore—COTP Zone			
1	April—1st or 2nd Saturday	Washington Channel, Upper Potomac River, Washington, DC; Safety Zone.	All waters of the Upper Potomac River within 170 yards radius of the fireworks barge in approximate position latitude 38°52′20.3″ N., longitude 077°01′17.5″ W., located within the Washington Channel in Washington Harbor, DC.
2	July 4th; December—1st and 2nd Saturday; December 31st.	Severn River and Spa Creek, Annapolis, MD; Safety Zone.	All waters of the Severn River and Spa Creek within a 300 yard radius of the fireworks barge in approximate position 38°58′41.76″ N., 076°28′34.2″ W., located near the entrance to Spa Creek, Annapolis, MD.
3	July—4th, or Saturday before or after Independence Day holiday.	Middle River, Baltimore County, MD; Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N., longitude 076°23′49″ W., approximately 300 yards east of Rockaway Beach, near Turkey Point.
4	December 31	Upper Potomac River, Washington, DC; Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′14″ N., 077°02′10″ W., located near the waterfront (King Street) at Alexandria, Virginia.
5	June 14th; July 4th; September—2nd Saturday; December 31st.	Northwest Harbor (East Channel), Patapsco River, MD; Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N., 076°34′35″ W., located adjacent to the East Channel of Northwest Harbor.
6	May—2nd or 3rd Thursday or Friday; July 4th; December 31st.	Baltimore Inner Harbor, Patapsco River, MD; Safety Zone.	All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N., longitude 076°36′31″ W., located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3.
7	May—2nd or 3rd Thursday or Friday; July 4th December 31st.	Baltimore Inner Harbor, Patapsco River, MD; Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N., longitude 076°36′36″ W., located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1.
8	July 4th; December 31st.	Northwest Harbor (West Channel) Patapsco River, MD; Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N., longitude 076°34′38″ W., located adjacent to the West Channel of Northwest Harbor.
9	July—4th, or Saturday before or after Independence Day holiday.	Patuxent River, Calvert County, MD; Safety Zone.	All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N., longitude 076°27′45″ W., approximately 800 feet from shore at Solomons Island, MD.
10	July 3rd	Chesapeake Bay, Chesapeake Beach, MD; Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N., longitude 076°31′30″ W., and within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N., longitude 076°31′29″ W., located near Chesapeake Beach, Maryland.
11	July 4th	Choptank River, Cambridge, MD; Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N., longitude 076°04′46″ W.
12	July—2nd, 3rd or last Saturday	Potomac River, Fairview Beach, Charles County, MD; Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°19′57″ N., longitude 077°14′40″ W., located north of the shoreline at Fairview Beach, Virginia.
13	May—last Saturday; July 4th	Potomac River, Charles County, MD; Mount Vernon, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N., longitude 077°04′47″ W.; thence to latitude 38°42′18″ N., longitude 077°04′42″ W.; thence to latitude 38°42′11″ N., longitude 077°05′10″ W.; thence to latitude 38°42′22″ N., longitude 077°05′12″ W.; thence to point of origin located along the Potomac River shoreline at George Washington's Mount Vernon Estate, Fairfax County, VA.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Location	Safety zone—regulated area
14	October—1st Saturday	Dukeharts Channel, Potomac River, MD; Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N., longitude 076°44′48″ W., located adjacent to Dukeharts Channel near Coltons Point, Maryland.
15	July—day before Independence Day holiday and July 4th; November—3rd Thursday, 3rd Saturday and last Friday; December—1st, 2nd and 3rd Friday.	Potomac River, National Harbor, MD; Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N., longitude 077°00′58″ W.; thence to latitude 38°46′51″ N., longitude 077°01′15″ W.; thence to latitude 38°47′25″ N., longitude 077°01′33″ W.; thence to latitude 38°47′32″ N., longitude 077°01′08″ W.; thence to the point of origin, located at National Harbor, Maryland.
16	Sunday before or after July 4th, July 4th.	Susquehanna River, Havre de Grace, MD; Safety Zone.	All waters of the Susquehanna River within a 300 yard radius of approximate position latitude 39°32′06″ N., longitude 076°05′22″ W., located on the island at Millard Tydings Memorial Park.
17	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD; Safety Zone.	All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N., longitude 076°12′51″ W., located at the entrance to Long Haul Creek.
18	July 3rd	Tred Avon River, Oxford, MD; Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N., longitude 076°10′37″ W., approximately 500 yards northwest of the waterfront at Oxford, MD.
19	July 3rd	Northeast River, North East, MD; Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N., longitude 075°57′00″ W., approximately 400 yards south of North East Community Park.
20	July—1st, 2nd or 3rd Saturday	Upper Potomac River, Washington, DC; Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′38″ N., 077°01′56″ W., located east of Oronoco Bay Park at Alexandria, Virginia.
21	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC; Safety Zone.	All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N., longitude 077°00′16″ W., located near the Washington Nationals Ball Park.
22	June—last Saturday or July—1st Saturday; July—3rd, 4th or last Saturday or September—Saturday before Labor Day (observed).	Potomac River, Prince William County, VA; Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′09″ N., longitude 077°15′32″ W., located near Cherry Hill, Virginia.
23	July 4th	North Atlantic Ocean, Ocean City, MD; Safety Zone.	All waters of the North Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N., longitude 075°05′03.2″ W.; thence to latitude 38°19′36.7″ N., longitude 075°04′53.5″ W.; thence to latitude 38°19′45.6″ N., longitude 075°04′49.3″ W.; thence to latitude 38°19′49.1″ N., longitude 075°05′00.5″ W.; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach.
24	May—Sunday before Memorial Day (observed). June 29th; July 4th and July every Sunday. August—1st Sunday and Sunday before Labor Day (observed).	Isle of Wight Bay, Ocean City, MD; Safety Zone.	All waters of Isle of Wight Bay within a 200 yard radius of the fireworks barge in approximate position latitude 38°22′31″ N., longitude 075°04′34″ W.
25	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD; Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′55″ N., longitude 075°03′53″ W.
26	July 4th; December 31st	Baltimore Harbor, Baltimore Inner Harbor, MD; Safety Zone.	All waters of Baltimore Harbor, Patapsco River, within a 280 yard radius of a fireworks barge in approximate position latitude 39°16′36.7″ N., longitude 076°35′53.8″ W., located northwest of the Domino Sugar refinery wharf at Baltimore, Maryland.
27	Thursday before July 4th (observed); and or July 4th.	Chester River, Kent Island Narrows, MD, Safety Zone.	All waters of Chester River, Kent Narrows North Approach, within a 300 yard radius of the fireworks launch site at Kent Island in approximate position latitude 38°58'44.4" N., longitude 076°14'51.7" W., in Queen Anne's County, MD.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Location	Safety zone—regulated area
28	Sunday before or after July 4th, July 4th.	Susquehanna River, Havre de Grace, MD; Safety Zone.	All waters of the Susquehanna River within a 300 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N., longitude 076°04′29″ W., located east of the waterfront at Havre de Grace, MD.
(c.) Coast Guard Sector Hampton Roads—COTP Zone			
1	July 4th	Linkhorn Bay, Virginia Beach, VA, Safety Zone.	All waters of the Linkhorn Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′20″ N., longitude 076°00′38″ W., located near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
2	September—last Friday or October—1st Friday.	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N., longitude 076°47′19″ W.
3	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N., longitude 076°30′02″ W., located near Yorktown, Virginia.
4	July 4th, July 5th, July 6th, or July 7th.	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N., longitude 076°26′19″ W., located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
5	June—4th Friday; July—1st Friday; July 4th.	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N., longitude 076°15′00″ W., located near Ocean View Fishing Pier.
6	July 4th or 5th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N., longitude 076°03′27″ W., located at the First Landing State Park at Virginia Beach, Virginia.
7	July 4th; December 31st, January—1st.	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N., longitude 076°18′10.7″ W.; thence to latitude 36°51′7.9″ N., longitude 076°18′01″ W.; thence to latitude 36°50′45.6″ N., longitude 076°17′44.2″ W.; thence to latitude 36°50′29.6″ N., longitude 076°17′23.2″ W.; thence to latitude 36°50′7.7″ N., longitude 076°17′32.3″ W.; thence to latitude 36°49′58″ N., longitude 076°17′28.6″ W.; thence to latitude 36°49′52.6″ N., longitude 076°17′43.8″ W.; thence to latitude 36°50′27.2″ N., longitude 076°17′45.3″ W. thence to the point of origin.
8	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N., longitude 078°32′50″ W., located near the center span of the State Route 15 Highway Bridge.
9	June, July, August, and September—every Wednesday, Thursday, Friday, Saturday and Sunday. July 4th.	North Atlantic Ocean, Virginia Beach, VA, Safety Zone. A.	All waters of the North Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N., longitude 075°58′06″ W., located off the beach between 17th and 31st streets.
10	September—last Saturday or October—1st Saturday.	North Atlantic Ocean, VA Beach, VA, Safety Zone. B.	All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N., longitude 075°58′09″ W., located on the 14th Street Fishing Pier.
11	Friday, Saturday and Sunday Labor Day Weekend.	North Atlantic Ocean, VA Beach, VA, Safety Zone. C.	All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N., longitude 075°58′00″ W., located off the beach between 2nd and 6th streets.
12	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N., longitude 076°34′42″ W., located near Constant's Wharf in Suffolk, VA.
13	July 4th	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N., longitude 076°52′17″ W., near Barrets Point, Virginia.
14	July—3rd, 4th and 5th	Great Wicomico River, Mila, VA, Safety Zone.	All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position latitude 37°50′31″ N., longitude 076°19′42″ W. near Mila, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s) [1]	Location	Safety zone—regulated area
15	July—1st Friday, Saturday and Sunday.	Cockrell's Creek, Reedville, VA, Safety Zone.	All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N., longitude 076°16′44″ W. near Reedville, Virginia.
16	May—last Sunday	James River, Richmond, VA, Safety Zone.	All waters of the James River located within a 420 foot radius of the fireworks display at approximate position latitude 37°31′13.1″ N., longitude 077°25′07.84″ W. near Richmond, Virginia.
17	June—last Saturday	Rappahannock River, Tappahannock, VA, Safety Zone.	All waters of the Rappahannock River located within a 400 foot radius of the fireworks display at approximate position latitude 37°55′12″ N., longitude 076°49′12″ W. near Tappahannock, Virginia.
18	July 4th, August—1st Friday, Saturday and Sunday, and December 31st.	Cape Charles Harbor, Cape Charles, VA, Safety Zone.	All waters of Cape Charles Harbor located within a 375 foot radius of the fireworks display at approximate position latitude 37°15′46.5″ N., longitude 076°01′30.3″ W. near Cape Charles, Virginia.
19	July 3rd or 4th	Pagan River, Smithfield, VA, Safety Zone.	All waters of the Pagan River located within a 420 foot radius of the fireworks display at approximate position latitude 36°59′18″ N., longitude 076°37′45″ W. near Smithfield, Virginia.
20	July 4th	Sandbridge Shores, Virginia Beach, VA, Safety Zone.	All waters of Sandbridge Shores located within a 300 foot radius of the fireworks display at approximate position latitude 36°43′24.9″ N., longitude 075°56′24.9″ W. near Virginia Beach, Virginia.
21	July 4th, 5th or 6th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of Chesapeake Bay located within a 600 foot radius of the fireworks display at approximate position latitude 36°54′58.18″ N., longitude 076°06′44.3″ W. near Virginia Beach, Virginia.
22	July 3rd, 4th and 5th	Urbanna Creek, Urbanna, VA; Safety Zone.	All waters of Urbanna Creek within a 350 foot radius of the fireworks launch site at latitude 37°38′09″ N., longitude 076°34′03″ W., located on land near the east shoreline of Urbanna Creek and south of Bailey Point.
23	April—August, every Friday and Saturday; July 2nd, 3rd, 4th and 5th; last Sunday in August; and Friday, Saturday and Sunday of Labor day weekend.	Elizabeth River Eastern Branch, Norfolk, VA; Safety Zone.	All waters of the Eastern Branch of Elizabeth River within the area along the shoreline immediately adjacent to Harbor Park Stadium ball park and outward into the river bound by a line drawn from latitude 36°50′29.65″ N., longitude 076°16′48.9″ W., thence south to 36°50′28.79″ N., longitude 076°16′49.12″ W., thence east to 36°50′26.74″ N., longitude 076°16′39.54″ W., thence north to 36°50′27.7″ N., longitude 076°16′39.36″ W. terminating at the SW corner of Harbor Park finger pier.
(d.) Coast Guard Sector North Carolina—COTP Zone			
1	July 4th; October—1st Saturday.	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N., longitude 076°42′59.6″ W., a position located at the west end of Sugar Loaf Island, NC.
2	April—2nd Saturday; July 4th; August—3rd Monday; October—1st Saturday.	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: Latitude 34°13′54″ N., longitude 077°57′06″ W.; thence northeast to latitude 34°13′57″ N., longitude 077°57′05″ W.; thence north to latitude 34°14′11″ N., longitude 077°57′07″ W.; thence northwest to latitude 34°14′22″ N., longitude 077°57′19″ W.; thence east to latitude 34°14′22″ N., longitude 077°57′06″ W.; thence southeast to latitude 34°14′07″ N., longitude 077°57′00″ W.; thence south to latitude 34°13′54″ N., longitude 077°56′58″ W.; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
3	July 1st Saturday and July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N., longitude 076°42′10.4″ W., located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4	July 4th	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch barge in approximate position latitude 36°17′47″ N., longitude 076°12′17″ W., located approximately 400 yards north of Cottage Point, NC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Enforcement period(s)[1]	Location	Safety zone—regulated area
5	July 4th, or July 5th	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N., longitude 075°49′56.3″ W., located near Whale Head Bay.
6	July 4th; November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N., longitude 077°45′32″ W., thence east along the marsh to a position located at latitude 34°16′19″ N., longitude 077°44′55″ W., thence south to the causeway at position latitude 34°16′16″ N., longitude 077°44′58″ W., thence west along the shoreline to position latitude 34°16′29″ N., longitude 077°45′34″ W., thence back to the point of origin.
7	June—2nd Saturday; July 4th	Pamlico River, Washington, NC, Safety Zone.	All waters of Pamlico River and Tar River within a 300 yard radius of latitude 35°32′25″ N., longitude 077°03′42″ W., a position located on the southwest shore of the Pamlico River, Washington, NC.
8	July 4th	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N., longitude 077°01′35.8″ W.; located 420 yards north of the New Bern, Twin Span, high-rise bridge.
9	July 4th	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03′04″ N., longitude 076°36′18″ W., approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC.
10	July 4th. November—Saturday following Thanksgiving Day.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N., longitude 077°48′27″ W., approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11	July 4th	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N., longitude 078°01′18″ W., approximately 700 yards south of the waterfront at Southport, NC.
12	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N., longitude 075°59′24″ W., approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.
13	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N., longitude 077°26′18″ W., approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.
14	July 4th	Pantego Creek, Belhaven, NC, Safety Zone.	All waters on the Pantego Creek within a 600 foot radius of the launch site on land at position 35°32′35″ N., 076°37′46″ W.
15	July 4th	Atlantic Intracoastal Waterway, Swansboro, NC, Safety Zone.	All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of approximate position latitude 34°41′02″ N., longitude 077°07′04″ W., located on Pelican Island.
16	September—4th or last Saturday.	Shallowbag Bay, Manteo, NC; Safety Zone.	All waters of Shallowbag Bay within a 200 yard radius of a fireworks barge anchored at latitude 35°54′31″ N., longitude 075°39′42″ W.
17	May—3rd Saturday	Pasquotank River; Elizabeth City, NC; Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks barge at latitude 36°17′47″ N., longitude 076°12′17″ W., located north of Cottage Point at the shoreline of the Pasquotank River.
18	October—2nd Saturday	Atlantic Intracoastal Waterway; Bogue Inlet, Swansboro, NC; Safety Zone.	All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of the fireworks launch site at latitude 34°41′02″ N., longitude 077°07′04″ W., located at Bogue Inlet, near Swansboro, NC.

[1] As noted in paragraph (d) of this section, the enforcement period for each of the listed safety zones is subject to change.

Dated: April 5, 2016.

Robert J. Tarantino,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 2016–09288 Filed 4–21–16; 8:45 am]

BILLING CODE 9110–04–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0187]

Drawbridge Operation Regulation; Newark Bay, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lehigh Valley Drawbridge across the Newark Bay, mile 4.3, at Jersey City, New Jersey. This deviation is necessary to allow the bridge owner to replace rails and ties at the bridge. This deviation allows the bridge to remain closed for 26 hours for two days.

DATES: This deviation is effective from 7 a.m. on June 5, 2016 to 7 p.m. on June 13, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0187] is available at *http://www.regulations.gov.* Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Lehigh Valley Drawbridge across Newark Bay, mile 4.3, at Jersey City, New Jersey, has a vertical clearance in the closed position of 35 feet at mean high water and 39 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.5.

The waterway is transited by seasonal recreational vessels and commercial vessels of various sizes.

The bridge owner, Consolidated Rail Corporation (CONRAIL), requested a temporary deviation from the normal operating schedule to facilitate replacement of the rails and ties at the bridge.

Under this temporary deviation, the Lehigh Valley Drawbridge may remain in the closed position for 26 hours, from 7 a.m. to 9 p.m. on June 5, 2016 and from 7 a.m. to 7 p.m. on June 6, 2016, and a rain date from 7 a.m. to 9 p.m. on June 12, 2016 and from 7 a.m. to 7 p.m. on June 13, 2016.

Vessels able to pass under the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 18, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–09310 Filed 4–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0309]

Drawbridge Operation Regulation; Arthur Kill, Staten Island, New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Arthur Kill (AK) Railroad Bridge across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey. This deviation allows the bridge to remain in the closed position to facilitate bridge inspection.

DATES: This deviation is effective from 7:28 a.m. on July 16, 2016, to 5:41 p.m. July 24, 2016.

ADDRESSES: The docket for this deviation [USCG–2016–0309] is available at *http://www.regulations.gov.* Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

SUPPLEMENTARY INFORMATION: The AK Railroad Bridge, across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey has a vertical clearance in the closed position of 31 feet at Mean High Water and 35 feet at Mean Low Water. The existing drawbridge operation regulations are listed at 33 CFR 117.702.

The waterway supports both commercial and recreational navigation of various vessel sizes. The operator of the bridge, Consolidated Rail Corporation (Conrail), requested a temporary deviation to facilitate scheduled bridge inspection of the movable span of the bridge. The bridge must remain in the closed position to perform this inspection.

Under this temporary deviation, the AK Railroad Bridge may remain in the closed position as follows:

On July 16, 2016 from 7:28 a.m. to 11:31 a.m. and from 1:31 p.m. to 5:48 p.m.

On July 17, 2016 from 8:16 a.m. to 12:17 p.m. and 2:17 p.m. to 6:29 p.m.

On July 23, 2016 from 6:32 a.m. to 10:29 a.m. and from 12:29 p.m. to 4:47 p.m.

On July 24, 2016 from 7:16 a.m. to 11:22 a.m. and from 1:22 p.m. to 5:41 p.m.

Vessels able to pass through the bridge in the closed positions may do so at anytime. There are no alternate routes for vessel traffic. The bridge can be opened in an emergency. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 19, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–09347 Filed 4–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0115]

RIN 1625–AA00

Safety Zone; Xterra Swim, Myrtle Beach, SC Intracoastal Waterway; Myrtle Beach, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Intracoastal Waterway in Myrtle Beach, South Carolina on Sunday, April 24, 2016 for the Xterra Swim. The temporary safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the event. The temporary safety zone will restrict vessel traffic in a portion of the Intracoastal Waterway, preventing non-participant vessels from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on April 24, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* type USCG–2016–0115 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On February 8, 2016, Set Up Events notified the Coast Guard that it will sponsor the Xterra Myrtle Beach Swim from 7:15 a.m. to 9:15 a.m. on April 24, 2016. In response, on March 3, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, Safety Zone; Xterra Swim, Myrtle Beach, SC Intracoastal Waterway; Myrtle Beach, SC [2016 FR 04664]. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended April 4, 2016, we received no comments.

Under good cause provisions in 5 U.S.C. 553(d)(3), we are making this rule effective less than 30 days after its publication in the **Federal Register**. The Coast Guard finds that good cause exists for making this rule effective starting April 24, 2016 because the Coast Guard did not receive notice of this event in time to publish an NPRM and publish a final rule 30 days before the event. The Coast Guard also finds good cause for making this rule effective less than 30 days after publication in the **Federal Register** because the public was provided details of the event on March 3, 2016 in the NPRM and designated representatives will be on scene to help the public understand how to comply with this rule.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's Authority to establish a safety zone: 33 U.S.C. 1231. The purpose of the proposed rule is to ensure safety of life on the navigable water of the United States during the swim portion of the Xterra Myrtle Beach Triathlon

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 3, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes a safety zone from 7:15 to 9:15 a.m. on April 24, 2016. The safety zone will cover a portion of Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. Approximately 75 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant for the following reasons: (1) The temporary safety zone would be enforced for only two hours; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0115 to read as follows:

§ 100.T07–0115 Safety Zone; Xterra Swim, Myrtle Beach SC.

(a) *Regulated area.* A temporary safety zone is established on certain waters of Intracoastal Waterway, Myrtle Beach, South Carolina. The temporary safety zone consists of all waters between the following two points of position and the North shore: 33°45.076′ N, 78°50.790′ W to 33°45.323′ N, 78°50.214′ W. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Xterra Swim, Myrtle Beach, or serving as safety vessels.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on April 24, 2016 from 7:15 a.m. until 9:15 a.m.

Dated: April 18, 2016.

G. L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–09345 Filed 4–21–16; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Product Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect classification changes to Competitive Services, as established by the Governors of the Postal Service.

DATES: The effective date of this rule is June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin at 202–268–2537.

SUPPLEMENTARY INFORMATION: New classification changes are available under Docket Number MC2016–118 on the Postal Regulatory Commission's Web site at *http://www.prc.gov.*

This final rule describes the international classification changes and the corresponding mailing standards changes for the following Competitive Service:

Priority Mail International

Priority Mail International® service provides reliable and affordable international delivery service to more than 180 countries. The price for Priority Mail International service is unchanged. The following classification changes are made to support the shift of certain volumes to the air parcel stream:

Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes

Currently, the Postal Service dispatches Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes in the letter post stream, while all other Priority Mail International items are dispatched in the air parcel stream. We are moving the Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes to the air parcel stream so that these items can receive the expanded access to tracking and insurance available to all other Priority Mail International items.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1. Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

1 International Mail Services

* * * * *

120 Preparation for Mailing

* * * * *

123 Customs Forms and Online Shipping Labels

* * * * *

123.6 Required Usage

123.61 Conditions

* * * * *

[Revise the second sentence of item c to read as follows:]

c. * * * In certain circumstances, this might require the mailer to send the mailpiece via Priority Mail Express International service or Priority Mail International service.

Exhibit 123.61

Customs Declaration Form Usage by Mail Category

[Revise the noted sections of the Exhibit as follows: (1) Replace the three separate Priority Mail International sections with just one section; (2) revise the last row of the First-Class Mail International section; (3) revise the first row of the First-Class Package International Service section; and (4) revise the footnote, all to read as follows:]

Type of item	Declared value, weight, or physical characteristic	Required form	Comment (if applicable)
*	*	*	* * * *
		Priority Mail International Items	
All Priority Mail International items.	All values	2976–A	All items mailed in USPS-produced Priority Mail International packaging (including Flat Rate Envelopes and Small Flat Rate Priced Boxes) or any other container bearing a Priority Mail sticker or marked with the words "Priority Mail" are considered to be within the scope of this requirement.
		First-Class Mail International Letters and Large Envelopes (Flats), Including International Priority Airmail (IPA) Items and International Surface Air Lift (ISAL) Items (Maximum weight limit: 4 pounds)	
*	*	*	* * * *
All items containing any goods, regardless of weight.	*	* *	* *
	Over $400	Prohibited	Items over $400 must be mailed using Global Express Guaranteed service, Priority Mail Express International service, or Priority Mail International service.

Type of item	Declared value, weight, or physical characteristic	Required form	Comment (if applicable)
First-Class Package International Service Packages (Small Packets), Including IPA Items and ISAL Items (Maximum weight limit: 4 pounds)			
All First-Class Package International Service packages (small packets), as defined in 251.2, regardless of contents.			
	* * * * *		
	Over $400	Prohibited	Items over $400 must be mailed using Global Express Guaranteed service, Priority Mail Express International service, or Priority Mail International.

* * * * * * *

*Qualifying items must meet the physical characteristics in 241.235. For example, the following items do not meet this requirement and must bear PS Form 2976: (1) First-Class Package International Service items and (2) IPA and ISAL packages (small packets) containing only documents.

* * * * *

130 Mailability

* * * * *

134 Valuable Articles

134.1 Service Options

* * * * *

[Revise item b to read as follows:]

* * * * *

b. Priority Mail International service.

* * * * *

140 International Mail Categories

141 Definitions

* * * * *

141.4 Priority Mail International

[Revise 141.4 in its entirety to read as follows:]

Priority Mail International is subject to the provisions of the Universal Postal Union Parcel Convention. This classification is primarily designed to accommodate larger and heavier shipments whose size and/or weight exceeds the limits for First-Class Mail International Service or First-Class Package International Service. For countries that offer parcel service, maximum weight limits range from 22 pounds to 70 pounds. To determine the maximum weight limit for each country, see the Individual Country Listings. At the sender's option, extra services, such as additional merchandise insurance coverage and return receipt service, may be added on a country-specific basis.

Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes provide customers with an economical means of sending correspondence, documents, printed matter, and lightweight merchandise items to foreign destinations. The maximum weight limit is 4 pounds. Registered Mail service is not available for Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes. At the sender's option, extra services, such as additional merchandise insurance coverage and return receipt service, may be added to Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes on a country-specific basis.

* * * * *

2 Conditions for Mailing

* * * * *

230 Priority Mail International

231 Description and Physical Characteristics

231.1 General

[Revise the text to read as follows:]

Priority Mail International service is considered a parcel stream for mail exchange purposes.

* * * * *

232 Eligibility

[Revise the title and text of 232.1 in its entirety to read as follows (replacing current section 232.11 and deleting current section 232.12):]

232.1 Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes—General

Correspondence, negotiable and nonnegotiable documents, printed matter, and lightweight merchandise items may be sent in Priority Mail International Flat Rate Envelopes or Small Flat Rate Priced Boxes provided the contents are mailable, they fit securely in the envelope or box, and they are entirely confined within the container with the provided adhesive as the means of closure. The flap must close within the prefabricated fold. Tape may be applied to the flap and seams for closure or for reinforcement, provided the design of the container is not enlarged by opening the sides and taping or reconstructing the container in any way. Refer to the Individual Country Listings for additional prohibitions for each country. Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes containing merchandise are insured against loss, damage, or missing contents up to $200 at no additional charge. Additional merchandise insurance may be available, depending on country and value. Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes containing only nonnegotiable documents are insured against loss, damage, or missing contents up to $100 for document reconstruction at no additional charge. See Exhibit 322.2 and the Individual Country Listings for insurance availability, limitations, and coverage. Registered Mail service is not available.

* * * * *

232.6 Customs Forms Required

232.61 Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes

[Revise the text in its entirety to read as follows:]

Each Priority Mail International Flat Rate Envelope and each Priority Mail International Small Flat Rate Priced Box must bear a properly completed PS Form 2976–A.

* * * * *

232.7 Mail Sealed Against Inspection

[Revise the text to read as follows:]

No Priority Mail International items (USPS-produced Flat Rate Boxes, Flat Rate Envelopes, and Small Flat Rate Priced Boxes; USPS-produced Tyvek envelopes; or customer-supplied boxes and envelopes) are sealed against inspection. Regardless of physical closure, the mailing of Priority Mail International items constitutes consent by the mailer to inspection of the contents.

232.8 Priority International Insurance and Indemnity

232.81 Indemnity

[Revise the first sentence to read as follows:]

Priority Mail International items containing merchandise are insured against loss, damage, or missing contents up to $200 at no additional charge.* * *

* * * * *

232.9 Extra Services

[Delete 232.91 "Certificate of Mailing" and 232.93 "Registered Mail Service," renumber 232.92 as 232.91, and renumber 232.94 as 232.92:]

232.91 Merchandise Insurance

[Revise the first sentence to read as follows:]

Merchandise insurance that provides coverage greater than the included $200 merchandise insurance is available for Priority Mail International items to many countries. * * *

* * * * *

232.92 Return Receipt Service

[Revise the text in its entirety to read as follows:]

Return receipt service is available for purchase to certain destinations (see the Individual Country Listings for availability) for Priority Mail International items, including Priority Mail International Small Flat Rate Priced Boxes, and Priority Mail International Flat Rate Envelopes. See 340 for preparation procedures.

* * * * *

240 First-Class Mail International

* * * * *

242 Eligibility

* * * * *

242.2 Customs Forms Required

242.21 Dutiable Merchandise

The following conditions apply to dutiable merchandise mailed with First-Class Mail International service:

* * * * *

[Revise item d to read as follows:]

d. The maximum value for dutiable merchandise is $400. Items exceeding $400 must be mailed using Global Express Guaranteed service, Priority Mail Express International service, or Priority Mail International service.

* * * * *

250 First-Class Package International Service

* * * * *

252 Eligibility

252.1 Content

[Revise the last sentence to read as follows:]

* * * * *

* * * Items exceeding $400 must be mailed using Global Express Guaranteed service, Priority Mail Express International service, or Priority Mail International service.

* * * * *

270 Free Matter for the Blind

* * * * *

272 Eligibility

* * * * *

272.6 Extra Services

* * * * *

[Revise items a and b to read as follows:]

a. Registered Mail service for First-Class Mail International items and First-Class Package International Service items.

b. Additional merchandise insurance service for Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes up to 4 pounds and Priority Mail International items up to 15 pounds.

* * * * *

3 Extra Services

310 Certificate of Mailing

311 Individual Pieces

* * * * *

311.2 Availability

311.21 At Time of Purchase

* * * * *

[Delete items e and f and redesignate item g as item e

* * * * *

312 Bulk Quantities—Certificate of Mailing

* * * * *

312.2 Availability

312.21 At Time of Entry

[Delete items e and f and redesignate item g as item e]

* * * * *

320 Insurance

* * * * *

323 Priority Mail International Insurance

323.1 Description

[Revise the text to read as follows:]

Priority Mail International shipments containing merchandise are insured against loss, damage, or missing contents up to $200 at no additional charge. Priority Mail International shipments containing only nonnegotiable documents are insured against loss, damage, or missing contents up to $100 for document reconstruction at no additional charge. Indemnity is paid by the U.S. Postal Service as provided in 933. For a fee, the sender may purchase additional insurance to protect against loss, damage, or missing contents for Priority Mail International items containing merchandise, subject to individual country limitations. Additional document reconstruction insurance may not be purchased. If the item has been lost, or if it has been delivered to the addressee in damaged condition or with missing contents, payment is made to the sender unless the sender waives the right to payment, in writing, in favor of the addressee.

323.2 Availability

[Revise the text in its entirety to read as follows:]

Merchandise insurance above the included $200 amount is available for all Priority Mail International items, to certain countries. See Exhibit 322.2.

* * * * *

330 Registered Mail

* * * * *

332 Availability

[Revise the text to read in its entirety to read as follows:]

Customers may purchase Registered Mail service for items that weigh up to 4 pounds. Registered Mail service is not available with Global Express Guaranteed, Priority Mail Express International, or Priority Mail International service or any type of M-bag service. See Individual Country Listings for additional country-specific prohibitions and restrictions. Registered Mail service is available for the following types of mail:

a. First-Class Mail International items, including Free Matter for the Blind items.

b. First-Class Package International Service items, including Free Matter for the Blind items.

* * * * *

340 Return Receipt

341 Description

[Revise the first sentence to read as follows:]

PS Form 2865, *Return Receipt for International Mail* (Avis de Reception), is a pink card that is attached to a registered item or a Priority Mail International item at the time of mailing and that is removed and signed at the point of delivery and returned to the sender. * * *

342 Availability

[Revise the first sentence to read as follows:]

Return receipts can be purchased only at the time of mailing and are available only for a registered item or a Priority Mail International item. * * *

4 Treatment of Outbound Mail

* * * * *

420 Unpaid and Shortpaid Mail

* * * * *

423 Shortpaid Mail

* * * * *

423.2 Disposition

* * * * *

[Revise the heading for 423.23 to read as follows:]

423.23 Priority Mail International Items

423.231 Items Paid With a Permit Imprint or USPS-Produced PVI Label

[Revise the text to read as follows:]

Regardless of the amount of deficiency, consider as paid in full each shortpaid Priority Mail International item that is paid with a permit imprint or USPS-produced postage validation imprinter (PVI) label, and dispatch it to the appropriate International Service Center (ISC).

423.232 Items Paid With Any Other Postage Payment Method

[Revise the first sentence to read as follows:]

The disposition of a shortpaid Priority Mail International item paid with a postage payment method other than a permit imprint or USPS-produced PVI label is based on the amount of the deficiency, as follows: * * *

* * * * *

[After item b2, delete the Note]

[Revise the heading of 423.24 to read as follows:]

423.24 First-Class Mail International Items (including Postcards), First-Class Package International Service Items, and Airmail M-bags

423.241 Items Paid With a Permit Imprint or USPS-Produced PVI Label

[Revise the text to read as follows:]

Regardless of the amount of deficiency, consider as paid in full each shortpaid First-Class Mail International item (including a postcard), First-Class Package International Service item, and Airmail M-bag that is paid with a permit imprint or USPS-produced postage validation imprinter (PVI) label, and dispatch it to the appropriate International Service Center (ISC).

423.242 Items Paid With Any Other Postage Payment Method

[Revise the introductory text to read as follows:]

The disposition of a shortpaid First-Class Mail International item (including a postcard), First-Class Package International Service item, and Airmail M-bag that is paid with a postage payment method other than a permit imprint or USPS-produced PVI label is based on the amount of the deficiency, as follows: * * *

* * * * *

7 Treatment of Inbound Mail

* * * * *

770 Undeliverable Mail

771 Mail of Domestic Origin

* * * * *

771.5 Return Charges for Letter-post Items

771.51 General

* * * * *

[In the list, omit items a and b, and redesignate items c through g as items a through e]

* * * * *

9 Inquiries, Indemnities, and Refunds

* * * * *

920 Inquiries and Claims

921 Inquiries

* * * * *

921.2 Initiating an Inquiry

[Revise the first two sentences to read as follows:]

Inquiries can be initiated for Global Express Guaranteed (GXG) items, Priority Mail Express International items, Priority Mail International items, and registered items. Inquiries are not accepted for ordinary letters or M-bags. * * *

Exhibit 921.2

Time Limits for Inquiries

[Revise the last row to read as follows:]

Product or extra service	Who	When to file an inquiry (from mailing date)	
		No sooner than	No later than
* * * * * * *			
Priority Mail International or Registered Mail.	Sender or Addressee[4]	7 days	6 months.
* * * * * * *			

* * * * *

921.4 Inquiry Process

[Revise the second sentence to read as follows:]

* * * For inquiries on Priority Mail International items or Registered Mail items, customers must allow foreign posts approximately 60 days to research and respond to the International Research Group. * * *

921.5 General Procedures

921.51 Nondelivery

[Revise the text to read as follows:]

The U.S. Postal Service will initiate an inquiry within the time frames specified in 921.2 with the destination postal administration in any case involving a Priority Mail Express International item, a registered item, or a Priority Mail International item that has not been delivered. Inquiries are not accepted for ordinary letters or M-bags.

For nondelivery of Global Express Guaranteed shipments, see 212.46.

* * * * *

Country Price Groups and Weight Limits

* * * * *

[Revise footnote 4 to apply only to Cuba; delete footnote 5; revise the information for Ascension, Bolivia, the Falkland Islands, and Korea, Democratic People's Republic of (North Korea):]

[4] Cuba: only Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes (maximum weight: 4 lbs. each) may be used.

Country	Global express guaranteed		Priority mail express international			Priority mail international			First-class mail international and first-class package international service	
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	PMEI flat rate envelopes price group[1]	Price group	Max. wt. (ozs./lbs.)	PMI flat rate envelopes and boxes price group[2]	Price group	Max. wt. (ozs./lbs.)[3]
Ascension	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	7	3.5/4
Bolivia	8	70	9	66	2	n/a	n/a	n/a	9	3.5/4
Cuba	n/a	n/a	n/a	n/a	n/a	n/a	n/a	[4]8	9	3.5/4
Falkland Islands	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	9	3.5/4
Korea, Democratic People's Republic of (North Korea)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6	3.5/4

* * * * *

Country Conditions for Mailing

* * * * *

Priority Mail International (230)

* * * * *

[For each country that lists Priority Mail International insurance, change the parenthetical cross-reference in the heading to "232.91" and revise the text to read as follows:]

Insurance (232.91)

Available for Priority Mail International merchandise only (see 323.72 for markings)

* * * * *

Customs Forms Required (123)

[For each country that lists Priority Mail International, revise the text to read as follows:]

All Priority Mail International items:

PS Form 2976–A inside PS Form 2976–E (envelope)

* * * * *

Free Matter for the Blind (270)

* * * * *

[For each country that lists Free Matter for the Blind, revise the second sentence to read as follows:]

Free when sent as Priority Mail International parcels. Weight limit: 15 pounds.

* * * * *

Customs Form Required (123)

[For each country that lists Free Matter for the Blind customs form information, revise the text to read as follows:]

First-Class Mail International items or First-Class Package International Service items:

PS Form 2976 as required (see 123.61)

Priority Mail International items (including Priority Mail International Flat Rate Envelopes and Priority Mail International Small Flat Rate Priced Boxes):

PS Form 2976–A inside PS Form 2976–E (envelope)

* * * * *

Extra Services

* * * * *

Registered Mail (330)

* * * * *

[For each country that lists Registered Mail service, revise the "availability" paragraph to read as follows:]

Available only for First-Class Mail International, including postcards, First-Class Package International Service, and Free Matter for the Blind sent as First-Class Mail International and First-Class Package International Service.

* * * * *

Return Receipt (340)

* * * * *

[For each country that lists Return Receipt service, revise the "availability" paragraph to read as follows:]

Available for Registered Mail and Priority Mail International only.

Ascension

Country Conditions for Mailing

* * * * *

[Revise the Priority Mail International section to read as follows:]

Priority Mail International (230)

Not Available.

* * * * *

Bolivia

Country Conditions for Mailing

* * * * *

[Revise the introductory text to read as follows:]

Priority Mail International service is suspended due to lack of available air transportation. This suspension of service does not affect other international mail categories currently available.

* * * * *

[Revise the Priority Mail International section to read as follows:]

Priority Mail International (230)

Not Available.

* * * * *

Falkland Islands

Country Conditions for Mailing

* * * * *

[Revise the Priority Mail International section to read as follows:]

Priority Mail International (230)

Not Available.

* * * * *

Korea, Democratic People's Republic of (North Korea) Country Conditions for Mailing

* * * * *

[Revise the Priority Mail International section to read as follows:]

Priority Mail International (230)

Not Available.

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–09213 Filed 4–21–16; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0618; FRL–9945–22–Region 4]

Air Plan Approval; Tennessee: Knox County VOC Limits Revision for Permits

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a portion of a revision to the Tennessee State Implementation Plan (SIP) submitted on March 14, 2014, by the State of Tennessee, through the Tennessee Department of Environmental Conservation (TDEC) on behalf of the Knox County Department of Air Quality Management (Knox County) to address changes to a Knox County regulation regarding permits. EPA has determined that Tennessee's requested SIP revision is consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective June 21, 2016 without further notice, unless EPA receives adverse comment by May 23, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0618 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo or D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Farngalo can be reached at (404) 562–9152 and via electronic mail at *farngalo.zuri@epa.gov.* Mr. Akers can be reached at (404) 562–9089 and via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 2014, TDEC submitted to EPA several revisions to the Knox County portion of the Tennessee SIP. At this time, EPA is acting on one portion of the submittal: Section 25 of the Knox County Air Quality Management Regulations, *Permits,* has been revised to add regulations that streamline the permitting process for sources that have the potential to emit volatile organic compounds (VOC), and EPA is approving the incorporation of that revision into the Tennessee SIP. The submittal also included revisions to section 25.6, adding a permit exemption, and to section 26.5, adding a requirement that certain sources of oxides of nitrogen and VOC submit an annual emissions statement. The revision to section 25.6 was withdrawn from the submittal in an August 7, 2015, letter sent to EPA by TDEC on behalf of Knox County, a copy of which is included in the Docket for today's action. EPA approved the revision to section 26.5 on November 5, 2015. *See* 80 FR 68448. Therefore, today's final rule completes EPA's action with respect to the March 14, 2014, submittal.

II. Analysis of Tennessee's Submittal

The portion of Tennessee's March 14, 2014, SIP submittal that EPA is approving today is the addition to the Knox County Air Quality Management Regulations of section 25.11, *Limiting a Source's Potential to Emit of VOC by Recordkeeping,* which sets forth recordkeeping and reporting requirements for a source that has the potential to emit above the major-source threshold but that prefers to be a synthetic minor source (*i.e.,* to accept limits lower than the major-source threshold of 100 tons per year). Section 25.11 establishes a three-tiered system of recordkeeping and reporting requirements, whereby sources that elect to set their limits at the highest threshold have the most stringent requirements and sources that opt for the lowest threshold have the least stringent requirements. These changes are consistent with "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound (VOC) Use" and "Potential to Emit (PTE) Guidance for Specific Source Categories," which are both EPA memoranda issued by the Office of Air Quality Planning Standards. EPA has reviewed Tennessee's requested changes to the Knox County Air Quality Management Regulations, and has concluded that the addition of Section 25.11 is consistent with the CAA.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Knox County Air Quality Management Regulations section 25.11, *Limiting a Source's Potential to Emit of VOC by Recordkeeping.* The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Final Action

EPA is approving a portion of Tennessee's March 14, 2014, SIP revision addressing changes to a Knox County regulation regarding permits. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 21, 2016 without further notice unless the Agency receives adverse comments by May 23, 2016.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 21, 2016 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 6, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. In § 52.2220, table 3 in paragraph (c) is amended by revising the entry for "Section 25.0" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

State section	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
25.0	Permits	3/12/2014	4/22/2016 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2016–09159 Filed 4–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0135; FRL–9941–85–OAR]

RIN 2060–AS36

Amendments Related to: Tier 3 Motor Vehicle Emission and Fuel Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on technical corrections and clarifications withdrawn from a previous direct final rule that amended provisions from the April 2014 Tier 3 final rulemaking and the July 2014 Quality Assurance Program final rulemaking. The regulatory changes being finalized in this final rule correct errors identified by the commenters and provide more clarity in the regulations to ensure that the regulations properly reflect the requirements established in those rules.

DATES: This final rule is effective on June 21, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0135. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: (734) 214–4131; *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this rule include gasoline refiners and importers, ethanol producers, ethanol denaturant producers, butane and pentane producers, gasoline additive manufacturers, transmix processors, terminals, and fuel distributors.

Potentially regulated categories include:

Category	NAICS[a] Code	Examples of potentially affected entities
Industry	324110	Petroleum refineries (including importers).
Industry	325110	Butane and pentane manufacturers.
Industry	325193	Ethyl alcohol manufacturing.
Industry	324110, 211112	Ethanol denaturant manufacturers.
Industry	211112	Natural gas liquids extraction and fractionation.
Industry	325199	Other basic organic chemical manufacturing.
Industry	486910	Natural gas liquids pipelines, refined petroleum products pipelines.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	325199	Manufacturers of gasoline additives.
Industry	424710	Petroleum bulk stations and terminals.
Industry	493190	Other warehousing and storage—bulk petroleum storage.

[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Introduction
II. Quality Assurance Program Amendments
III. Tier 3 Gasoline Sulfur Program Amendments
IV. Statutory and Executive Order Reviews

I. Introduction

In this action we are finalizing amendments withdrawn from a February 2015 direct final rule and parallel Notice of Proposed Rulemaking (80 FR 9078 and 80 FR 8826, February 19, 2015). Both of those actions were initiated to correct and clarify various provisions of the Tier 3 Motor Vehicle Emission and Fuel Standards ("Tier 3") rule without either expanding or making substantive changes to the applicable provisions. We also stated that if we received adverse comment by April 6, 2015, as to any part of the direct final rule, those parts would be withdrawn by publishing a timely notice in the **Federal Register**. We received adverse comment on three specific amendments—two provisions intended to correct and clarify portions of the Tier 3 rule (79 FR 23414, April 28, 2014) and one intended to clarify an aspect of the Renewable Fuel Standard (RFS) Renewable Identification Number (RIN) Quality Assurance Program ("QAP") rule (79 FR 42078, July 18, 2014). We withdrew all of the proposed amendments that received adverse comment, and they did not take effect. These changes are discussed in Sections II and III.

II. Quality Assurance Program Amendments for the Renewable Fuel Standard Program

In the final QAP rule (79 FR 42078, July 18, 2014), the EPA added additional product transfer document (PTD) requirements for renewable fuels that informed parties who took ownership of renewable fuel that they would need to (a) use the fuel as it was intended, *i.e.*, for transportation use; and (b) incur a renewable volume obligation (RVO) if the fuel was exported. Shortly after publication of the QAP final rule, we received questions on whether these PTD requirements would apply downstream to the end users, including residential heating oil owners and individuals filling up their vehicle fuel tanks at fuel retail stations. The EPA provides downstream end-user exemptions to the PTD requirements in other fuels programs, and the February 2015 direct final rule included similar exemptions for RFS PTD requirements. However, when the introductory text of 40 CFR 80.1453(a) was amended in the February 2015 direct final rule and parallel proposed rule to provide these exemptions for RFS PTD requirements, the words "custody or" were inadvertently added. The addition of the language "custody or" would have further changed this provision such that we would also be adding PTD requirements to the transfer of custody of renewable fuels, which was not our intent. We received several comments pointing out that this would be costly to industry and not beneficial to the RFS program. Commenters noted that applying PTD requirements to transfers of custody went beyond the PTD requirements of all other 40 CFR part 80 fuels programs, and would impose a new obligation on several parties in the fuel supply chain who otherwise do not have specific PTD obligations.

The February 2015 direct final rule and parallel proposal also included an amendment to the introductory text of 40 CFR 80.1453(a)(12) to remove an extraneous reference to § 80.1433, as this section does not exist in the regulations (80 FR 9084, February 19, 2015). We did not receive any adverse comments on this amendment.

In this action, we are finalizing the originally intended changes to 40 CFR 80.1453: In the introductory text of paragraph (a), we are providing downstream end-user exemptions to the PTD requirements in the RFS program similar to other EPA fuels programs, without the "custody or" language that was inadvertently added in the February 2015 direct final rule and parallel proposal; and, in the introductory text of paragraph (a)(12), we are deleting the extraneous reference to § 80.1433.

III. Tier 3 Gasoline Sulfur Program Amendments

After promulgation of the Tier 3 final rulemaking (79 FR 23414, April 28, 2014), we discovered some typographical errors and other imprecise language in the fuels regulations of 40 CFR part 80 that we believed would benefit from additional clarity. Subsequently, we published amendments to certain provisions, including 40 CFR 80.1616 and 80.1621 in the February 2015 direct final rule and parallel proposal (80 FR 9078 and 80 FR 8826, February 19, 2015). We explained that these amendments would correct and/or clarify various provisions of the Tier 3 rule without either expanding or making substantive changes to the applicable provisions. We received adverse comment on the amendments to 40 CFR 80.1616 and 80.1621. We are responding to those comments and finalizing changes to these provisions in this action, as described further below.

A. Amendments to 40 CFR 80.1616

In the parallel proposal, we proposed to amend 40 CFR 80.1616(a) to correct a numbering error. The regulations currently jump from paragraph (a)(3) to (a)(5), so we added a "Reserved" paragraph (a)(4) for continuity in the February direct final rule. We did not receive adverse comment on this amendment. We are now finalizing this amendment in this action.

We also proposed a clarifying amendment to 40 CFR 80.1616(b)(2). In the April 2014 Tier 3 final rule, we finalized language in paragraph (b)(2) specifying that credits generated relative to the Tier 2 gasoline sulfur standard of 30 parts per million (ppm) will expire "after March 31, 2020, when the 2019 annual compliance report is due." The intent of this language was to state that unused credits (that are still valid for use) that were generated relative to the 30 ppm Tier 2 gasoline sulfur standard would expire at the end of the 2019 compliance year (December 31, 2019), and must be reconciled in the 2019 annual compliance report. Refiners and importers are required to submit their annual compliance reports for the 2019 compliance year by March 31, 2020. (Compliance reports for a given year are due on March 31 of the following year.) We also note that in the Tier 3 final rule preamble we specified that all credits generated relative to the Tier 2 30 ppm sulfur standard prior to January 1, 2017 would be valid for five years or through December 31, 2019, whichever is earlier. (79 FR 23547, April 28, 2014.) In the Tier 3 Gasoline Sulfur program, as with all of our 40 CFR part 80 fuels programs, credits that expire on December 31 of a given year must be retired and reconciled in that year's annual compliance report, which is due on March 31 of the following year. The language we finalized in the Tier 3 final rule regulations was intended to express this. However, following promulgation of the Tier 3 final rule, we were contacted by regulated entities who believed that the language was confusing and suggested that we should edit the language to clarify that the credits themselves expire on December 31, 2019 and must be reconciled in the 2019 annual compliance report (due on March 31, 2020). We proposed to amend the language of 40 CFR 80.1616(b)(2) in the proposal accompanying the February 2015 direct final rule to make this clarification.

We received adverse comments on the clarifying amendment regarding the expiration of the credits on December 31, 2019. These comments advocated for small refiners and small volume refineries to be allowed to use credits for five years in all cases (*i.e.*, past December 31, 2019, for those credits where December 31, 2019 would be earlier than five years). The Tier 3 rule established January 1, 2020 as the date small refiners and small volume refineries must begin complying with the 10 ppm sulfur standard, and also as the date that credits generated relative to the Tier 2 program 30 ppm sulfur standard will no longer be available to use for compliance. EPA explained in the Tier 3 final rule (79 FR 23547, April 28, 2014), that it is important for the Tier 3 sulfur program to be fully implemented and enforceable beginning January 1, 2020, in part because it provides a date certain to give auto manufacturers greater confidence in designing their vehicles that the in-use sulfur level will be at a 10 ppm average. Allowing credits generated against the 30 ppm standard to be used for compliance with the 10 ppm standard past December 31, 2019 would likely allow higher sulfur levels to continue well beyond January 1, 2020.

The proposed amendment to 40 CFR 80.1616(b)(2) was simply intended to ensure that the regulations clearly reflected EPA's interpretation of the applicable requirement,[1] not to reopen the opportunity for comments on the issue of previous actions taken on credit generation and use periods for small refiners and small volume refineries. Therefore, EPA considers these comments as beyond the scope of the technical amendments. However, to the extent a response is required, we continue to believe that this issue was properly addressed in the April 2014 Tier 3 Final Rule, for the reasons stated above and in that rulemaking. Therefore, in this action, we are finalizing the amendment as originally published in the direct final rule.

B. Amendments to 40 CFR 80.1621

Following publication of the April 2014 Tier 3 Final Rule, we were contacted by some refiners to clarify if or when small volume refineries could be disqualified from receiving small volume refinery status. At that time, we learned that a provision providing the disqualification criteria for small volume refineries had been inadvertently deleted from the regulatory text of the Tier 3 final rule.

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[1] EPA does not believe that the prior language could reasonably be interpreted to allow regulated parties to use credits in compliance demonstrations after the 2019 demonstration due March 31, 2020, particularly in light of the preamble discussion, but proposed edits to remove any doubt regarding the last date to utilize credits and the due date of the associated compliance demonstration.

The regulations specified in 40 CFR 80.1622(e) that a "refiner who qualifies as a small refiner or small volume refinery under this subpart and subsequently fails to meet all the qualifying criteria as set out in §§ 80.1620 and 80.1621 will be disqualified pursuant to § 80.1620(f) or § 80.1621(d)." The criteria and process for disqualifying small refiners appears in 40 CFR 80.1620(f), but there is no 40 CFR 80.1621(d) that provides similar criteria for disqualifying small volume refineries. The provision was inadvertently deleted prior to publication of the Tier 3 rule. We proposed to restore the language that was intended to be included in 40 CFR part 80, and as previously noted, is currently referenced in 40 CFR 80.1622(e).

We received adverse comment on the amendments to 40 CFR 80.1621 arguing that:

- EPA neither proposed nor finalized disqualification criteria for small volume refineries for the April 2014 Tier 3 rule, and thus did not provide regulated entities the opportunity to comment on the 20-day notification requirement following disqualification, and further that the restoration of 40 CFR 80.1621(d) was not a technical amendment.
- The wording of the February 2015 direct final rule and parallel proposal is confusing because it does not explicitly state exactly when and under which circumstances disqualification could occur.
- Small volume refineries should not be constrained or treated differently than small refiners regarding disqualification, including in the case of growth or mergers.
- The term "small refinery" was used instead of the correct term "small volume refinery."
- EPA did not clarify if credits could continue to be generated during the 30-month grace period allowed for a disqualified small volume refinery to come into compliance.
- 40 CFR 80.1621 should be reorganized—disqualification criteria should not appear in this section of the regulations.

Our intent in the February 2015 direct final rule and parallel proposal was to correct an inadvertent omission of regulatory text for the disqualification of small volume refineries as discussed in the Tier 3 final rule preamble. (This discussion can be found at 79 FR 23552–53, April 28, 2014.) We explained (in both the April 2014 Tier 3 final rule, and in the February 2015 actions) that the application process for qualification for small volume refinery status was similar to the process for small refiner status. We further explained that a small refiner that owned and operated a small volume refinery would only need to apply for small refiner status. As explained above, the fact that the deletion of 40 CFR 80.1621(d) was inadvertent can be seen from the cross-reference to this provision in 40 CFR 80.1622(e) in both the proposed and final Tier 3 rule regulations. Thus, as previously explained, the amendment was intended to fix an omission, which was merely to restore 40 CFR 80.1621(d).

The inadvertent deletion of 40 CFR 80.1621(d) can be seen from the reference in 40 CFR 80.1622(e) in both the proposed and final regulations, which states that "A refiner who qualifies as a small refiner or small volume refinery under this subpart and subsequently fails to meet all the qualifying criteria as set out in §§ 80.1620 and 80.1621 will be disqualified pursuant to § 80.1620(f) or § 80.1621(d)." (79 FR 23662, April 28, 2014.) Further, the Tier 3 final rule preamble reflected our discussion of the similar treatment of both small volume refineries and small refiners, as evidenced by 40 CFR 80.1622. (79 FR 23549–23550, 23552–23553; April 28, 2014.) Moreover, the current small refiner disqualification provision at 40 CFR 80.1620(f), which contains both disqualification criteria and 20-day notification requirements, is analogous to the 40 CFR 80.1621(d) small volume refinery disqualification provision. Again, the April 2014 final Tier 3 rule intended for small refiner and small volume refinery qualification and disqualification for the Tier 3 program to be similar.

Regarding the comments that EPA should clarify when a disqualifying event occurs, we note that this would not be retroactive. Rather, such disqualification would occur after the effective date of the amended 40 CFR 80.1621(d), which is being amended in this regulatory action. For example, a refiner whose refinery was approved as a small volume refinery in 2015 prior to the restoration of 40 CFR 80.1621(d) would not be disqualified before the effective date of this final rulemaking. As such, the 30-month grace period afforded to small refiners and small volume refineries to come into compliance with the Tier 3 sulfur standards would not begin until the point that the refiner or its refinery is disqualified.

With regard to comments about the treatment of small volume refineries and small refiners with regard to growth or merger, we note that this is outside the scope of the rulemaking. While our intent with the Tier 3 program is to treat small refiners and small volume refineries similarly, there are some differences between small refiners and small volume refineries that require separate treatment, such as in the case of mergers.

As explained in the Tier 3 final rule, the Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. As also explained in the preamble to the Tier 3 final rule, in accordance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (RFA/SBREFA), we assessed the impacts of the rule on small entities. For refiners, a small entity is defined in the Small Business Administration's size standards[2] as a refiner whose company-wide employee count is 1,500 employees or fewer across all of the refiner's facilities. Small volume refineries are individual *facilities*—and these facilities may be owned by a refiner that does not meet the definition of a small entity. This assessment can be found in Section XII.C of the preamble to the Tier 3 final rule (79 FR 23624–26, April 28, 2014).

Further, we finalized a "small volume refinery" definition in the Tier 3 program because, as stated in the preambles to both the proposed and final rulemakings, our modeling during the development of the Tier 3 program showed that the cost of compliance could be higher for certain facilities. We explained that some of these facilities, which may be owned by refiners that would not qualify as small entities, could potentially benefit from additional time for compliance with the Tier 3 program. Thus, we included flexibilities for small volume refineries that are similar to those for small refiners.[3]

We note that the Tier 3 program's *small volume refinery* provisions are separate from the RFS program's *small refinery* provisions. The RFS program is required by statute to provide specific provisions for small refineries.[4] While

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[2] 13 CFR 121.201.

[3] 79 FR 23549, April 28, 2014.

[4] CAA section 211(o)(1)(K).

EPA chose to use the same 75,000 barrel threshold for Tier 3 small volume refineries that the RFS program uses for small refineries, we note that the choice to extend flexibilities to small volume refineries in the Tier 3 program was not a statutory requirement as with the RFS program. With the exception of the RFS program, the Tier 3 program is the first EPA fuels program under 40 CFR part 80 in which we have offered flexibilities based on facility size.

Regarding comments requesting more clarity in the language of 40 CFR 80.1621(d), we note that the February 2015 direct final rule and parallel proposal used the imprecise term "small refinery" in place of the correct term "small volume refinery," and we are correcting this language in this action. As disqualification is not meant to disallow the generation and use of credits during the 30-month period that is afforded to small refiners and small volume refineries to come into compliance with the Tier 3 program following a disqualifying event, clarifying language is also being added with this action. Lastly, we believe the comments regarding organization of this section of the regulations are outside of the scope. We also note that this organization is used in both the small refiner and small volume refinery provisions, to ensure that aspects of small refiner and small volume refinery qualification and related requirements were intentionally contained in the same sections of the regulations to provide a more streamlined approach for these parties to locate this information.

Thus, in this action, we are finalizing the restoration of 40 CFR 80.1621(d), with changes to ensure that the correct terminology ("small volume refinery") is used, and to clarify when a disqualifying event could occur and that credits can be generated during the 30-month period following disqualification.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the PRA, since it merely clarifies and corrects existing regulatory language. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers as noted in the table below.

Regulatory citation	Item	OMB Control No.
40 CFR part 80	In-use fuel standards	2060–0437

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule merely clarifies and corrects existing regulatory language. We therefore anticipate no costs and therefore no regulatory burden associated with this rule. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule merely corrects and clarifies regulatory provisions. Tribal governments would be affected only to the extent they purchase and use regulated vehicles or engines. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action is not expected to have any adverse human health or environmental impacts; as a result, the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

K. Congressional Review Act

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Fuel additives, Gasoline, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 12, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Section 80.1453 is amended by revising paragraphs (a) introductory text and (a)(12) introductory text to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) On each occasion when any party transfers ownership of neat and/or blended renewable fuels, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, or separated RINs subject to this subpart, the transferor must provide to the transferee documents that include all of the following information, as applicable:

* * * * *

(12) For the transfer of renewable fuel for which RINs were generated, an accurate and clear statement on the product transfer document of the fuel type from Table 1 to § 80.1426, and designation of the fuel use(s) intended by the transferor, as follows:

* * * * *

Subpart O—Gasoline Sulfur

■ 3. Section 80.1616 is amended by adding and reserving paragraph (a)(4) and revising paragraph (b)(2) to read as follows:

§ 80.1616 Credit use and transfer.

(a) * * *

(4) [Reserved]

* * * * *

(b) * * *

(2) Credits generated under § 80.1615(b) through (d) are valid for use for five years after the year in which they are generated, except that any CR$_a$ credits generated in 2015 and 2016 and any remaining CR$_{T2}$ credits will expire and become invalid after December 31, 2019 (with the 2019 annual compliance report, due March 31, 2020).

* * * * *

■ 4. Section 80.1621 is amended by adding and reserving paragraph (c) and adding paragraph (d) to read as follows:

§ 80.1621 Small volume refinery definition.

* * * * *

(c) [Reserved]

(d)(1) A refinery approved as a small volume refinery under § 80.1622 that subsequently ceases production of gasoline from processing crude oil through refinery processing units or exceeds the 75,000 barrel average aggregate daily crude oil throughput limit is disqualified as a small volume refinery. If such disqualification occurs, the refinery shall notify EPA in writing no later than 20 days following the disqualifying event.

(2) Any refinery whose status changes under this paragraph (d) shall meet the applicable standards of § 80.1603 within a period of up to 30 months from the disqualifying event.

[FR Doc. 2016–08912 Filed 4–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 150904826–6336–02]

RIN 0648–BF35

Fisheries of the Exclusive Economic Zone Off Alaska; Fixed-Gear Commercial Halibut and Sablefish Fisheries; Bering Sea and Aleutian Islands Crab Rationalization Program; Cost Recovery Authorized Payment Methods

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to revise the authorized methods for payment of cost recovery fees for the Halibut and Sablefish Individual Fishing Quota Program and the Bering Sea and Aleutian Islands Crab Rationalization Program. These regulations are necessary to improve data security procedures and to reduce administrative costs of processing cost recovery fee payments. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

DATES: Effective May 23, 2016.

ADDRESSES: Electronic copies of the following documents are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov:*

- The Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA), the final Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to *OIRA_submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION:

NMFS published a proposed rule to revise the authorized methods for payment of cost recovery fees for the Halibut and Sablefish Individual Fishing Quota Program (IFQ Program) and the Bering Sea and Aleutian Islands Crab Rationalization Program (CR Program) on December 31, 2015 (80 FR 81798). The comment period on the proposed rule ended on February 1, 2016.

Background

The following is a brief description of the IFQ Program and CR Program cost recovery and the authorized payment methods. For a more detailed description, please see Section 1.2 of the RIR (see **ADDRESSES**) and the preamble of the proposed rule (80 FR 81798, December 31, 2015) for this action.

Cost Recovery—General

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) specifies that the Secretary of Commerce is authorized, and shall collect a fee, to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program (LAPP) and community development quota program (CDQ) that allocates a percentage of the total allowable catch of a fishery to such program. Section 304(d) also specifies that such fee shall not exceed three percent of the ex-vessel value of fish harvested under any such program.

The IFQ Program is a LAPP as defined in the Magnuson-Stevens Act. NMFS implemented cost recovery for the IFQ Program in 2000 (65 FR 14919, March 20, 2000). Regulations implementing IFQ Program cost recovery are located at § 679.45. The CR Program is also a LAPP as defined in section 304(d) of the Magnuson-Stevens Act. Section 313(j) of the Magnuson-Stevens Act provides supplementary authority to section 304(d) and additional detail for cost recovery provisions specific to the CR Program. NMFS implemented cost recovery with the final rule to implement the CR Program in 2005 (70 FR 10174, March 2, 2005). Regulations implementing CR Program cost recovery are located at § 680.44.

NMFS recovers the incremental costs of managing and enforcing the IFQ Program and CR Program annually through a fee paid by persons who hold a permit granting an exclusive access privilege to a portion of the total allowable catches in IFQ Program and CR Program fisheries. NMFS calculates cost recovery fees for fish (including crab) that are landed and deducted from the total allowable catch in the fisheries subject to cost recovery. NMFS annually calculates the cost recovery fee percentage for the halibut and sablefish IFQ Program and for the CR Program by dividing the total program costs for each program by the total ex-vessel value of the catch subject to the cost recovery fee for the current year. Section 1.2 of the RIR and the preamble of the proposed rule (80 FR 81798, December 31, 2015) for this action describe these processes in greater detail.

Cost Recovery for the IFQ Program

The method used by NMFS to calculate the IFQ cost recovery fee percentage is described at § 679.45(d)(2)(ii). The IFQ permit holder is responsible for submitting their cost recovery payment to NMFS on or before the due date of January 31 following the year in which the IFQ halibut and sablefish landings were made. Additional information on the administration of IFQ Program cost recovery is provided in Section 3.5.1.1 of the RIR.

Cost Recovery for the CR Program

The method used by NMFS to calculate the CR Program cost recovery fee percentage is described at § 680.44(c)(2). The Registered Crab Receiver (RCR) is responsible for submitting payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made. Additional information on the administration of CR Program cost recovery is provided in Section 3.5.2.2 of the RIR.

This Final Rule

This final rule revises the authorized cost recovery fee payment methods for the IFQ and CR Programs by revising regulations at § 679.45(a)(4)(ii) through (iv), § 680.5(g)(3)(iii), and § 680.44(a)(4)(iii) and (iv), and eliminates the option for IFQ permit holders and CR Program RCRs to submit credit card payment information by mail or facsimile upon the effective date of this final rule. Prior to this final rule, cost recovery regulations for the IFQ Program and CR Program (§ 679.45(a)(4)(iv) and § 680.44(a)(4)(iv), respectively) allowed permit holders to pay their fee electronically or non-electronically in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or credit card. Electronic payments could be made using credit card or electronic check via the pay.gov web-based system, or by wiring payment directly from the permit holder's financial institution via the Fedwire Funds Service (Fedwire) funds transfer system. Non-electronic payments could be made by submitting a paper form to NMFS with credit card information via mail or facsimile, or by submitting a paper check or money order via mail.

Non-electronic submission of payment information to NMFS via mail or facsimile is less secure and results in higher administrative costs than electronic payments because it results in transmission of permit holders' financial information over the NMFS information network and requires NMFS to manually process payments. Before this final rule, permit holders could pay a cost recovery fee with a credit card by submitting a form via mail or facsimile with their credit card information to NMFS. Manual credit card processing results in the possession and transmission of IFQ Program and CR Program permit holders' credit card information over the NMFS information network. Manual credit card processing is a less secure method of payment than the permit holder directly entering their credit card information into pay.gov, and results in higher administrative costs for NMFS. Administrative costs to collect fees are subject to cost recovery. Therefore, the higher administrative costs to process credit cards manually results in an increased fee liability for the IFQ and CR Programs relative to electronic payments.

This final rule also eliminates paper checks, money orders, and bank-certified checks as authorized payment methods beginning with the 2020 cost recovery fee payment billing cycle. Payment with a paper check, money order, or bank-certified check can also increase administrative costs. Payment with paper check, money order, or bank certified check requires NMFS to manually update the internal cost recovery payment tracking system to reflect the payment. Discrepancies or errors between the cost recovery amount owed and the amount paid by check must be addressed by NMFS. Payment with paper check, money order, or bank-certified check results in higher administrative costs for NMFS, and those additional costs increase the fee liability for the IFQ and CR Programs relative to electronic payments.

This final rule requires all permit holders to submit payments through pay.gov or Fedwire beginning with the IFQ Program cost recovery fee payment due by January 31, 2020, and beginning with the CR Program cost recovery fee payment due by July 31, 2020. All cost recovery fee payments must be made electronically for any payment made on or after the first day of the billing cycle for IFQ Program and CR Program cost recovery fee payments that will be due in 2020. NMFS will allow non-electronic payments via paper check or money order until the 2020 cost recovery fee billing cycle to provide a transition period for permit holders to become familiar with, and begin transitioning to, electronic payment methods.

Electronic payments via the pay.gov system and the Fedwire system are the most secure methods of transmitting financial information and result in the lowest administrative costs for NMFS. IFQ Program and CR Program permit holders can access pay.gov through the NMFS Alaska Region online system called eFISH. Pay.gov is operated by the U.S. Department of the Treasury (Treasury) and offers the highest level of security for the personal and financial information submitted to pay fees to NMFS. Pay.gov uses the latest industry-standard methods and encryption to safely collect, store, and transmit information that is submitted.

Through pay.gov, permit holders can make cost recovery payments using a credit card, debit card, or direct debit (electronic check). Due to the transaction fee incurred by the Treasury, there is a payment limit of $24,999.99 on credit card transactions through pay.gov (see notice online at: *http://tfm.fiscal.treasury.gov/v1/announc/a-14-04.html*). There is currently no payment limit on debit card or direct debit payments. Payments made through pay.gov automatically update the NMFS internal cost recovery payment tracking system to reflect the payment.

Permit holders may also make cost recovery fee payments through Fedwire. Fedwire is a real-time transfer system that allows financial institutions to electronically transfer funds. Fedwire allows wire transfers of fee payments from any bank or wire transfer service to NMFS to fulfill cost recovery fee obligations. Payments are processed individually through Fedwire, which uses a highly secure electronic network.

Table 1 contains the implementation schedule for this final rule to revise authorized cost recovery fee payment methods.

TABLE 1—IMPLEMENTATION SCHEDULE FOR CHANGES TO AUTHORIZED COST RECOVERY FEE PAYMENT METHODS

Payment type	Current authorized options	2016–2019 fee payment cycle authorized options	2020 and future year fee–payment cycle authorized options
Non-electronic	Credit card form.		
	Paper check	Paper check.	
	Money order	Money order.	
Electronic	Pay.gov	Pay.gov	Pay.gov.
	Fedwire	Fedwire	Fedwire.

Comments and Responses

NMFS received no public comments on the proposed rule for this action.

Changes From the Proposed Rule

This final rule includes a change to the regulatory text and amendatory instructions published in the proposed rule. This final rule modifies amendatory instructions and removes § 680.5(g)(3)(iii), which describes the requirement for RCRs to submit the fee submission form, includes a description of the authorized payment methods for RCRs, and includes a reference to payment methods that are modified by this final rule in § 680.44(a)(4)(iv). Although the proposed rule did not include the removal of § 680.5(g)(3)(iii), NMFS has determined that it would be inconsistent with the objectives of this action to include duplicative descriptions of the authorized payment methods for CR Program cost recovery within the regulations.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined this final rule is consistent with the fishery management plans, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action. Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

The purpose of this rule is to improve security procedures for protecting financial information and to reduce costs associated with administering cost recovery. The current regulations for IFQ Program and the CR Program cost recovery allow permit holders to submit credit card information for manual credit card processing by NMFS. This results in the possession and electronic transmission of financial information on the NMFS information network, which is a security vulnerability and an administrative cost to both the permit holder and to NMFS.

This rule also reduces administrative costs for the IFQ Program and CR Program by eliminating other non-electronic payment methods that require manual processing. Manual processing of cost recovery fee payments made by check and money order generates significant costs for the administration of these programs. Eliminating these non-electronic payment methods from authorized payment method options reduces the staffing burden for processing cost recovery fee payments and further reduces the costs of administering cost recovery. Reduced administrative costs will result in lower overall fee liabilities for the IFQ and CR Programs.

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule to revise the authorized methods for payment of cost recovery fees for the IFQ Program and the CR Program on December 31, 2015 (80 FR 81798). The comment period on the proposed rule ended on February 1, 2016. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. NMFS received no comments on this proposed rule, the IRFA, or the economic impacts of this action generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Directly Regulated by the Rule

The entities directly regulated by this rule are permit holders who make halibut and sablefish landings in the IFQ Program fisheries and RCRs who receive landings of crab in the CR Program fisheries. The universe of entities was defined based on who is directly billed by NMFS for cost recovery fees, and therefore who will be directly impacted by a change in the authorized payment methods.

The Small Business Administration (SBA) defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than $20.5 million (79 FR 33647, June 12, 2014). All of the IFQ permit holders are considered to be commercial finfish fishing entities. Based upon available data, and more general information concerning the probable economic activity of vessels in the IFQ Program fisheries, no entity could have landed more than $20.5 million in combined gross receipts in 2014. Therefore, all 2,038 IFQ permit holders are classified as small entities.

For the CR Program, 18 RCRs were directly billed for cost recovery fee liabilities in the crab fishing year 2014/2015. These 18 RCRs include persons who operate as non-profit entities, seafood dealers that receive but do not process crab, shellfish harvesters, and seafood processors. Section 4.6 of the RIR/IRFA prepared for this rule describes how RCRs operating in these different categories were assessed under the SBA business size criteria (see **ADDRESSES**). The one RCR operating as a non-profit entity and the seven RCRs operating as seafood dealers were estimated to be small entities under the applicable SBA standard. One RCR operates as a catcher/processor and was evaluated under the shellfish harvesting size criteria. This RCR exceeds the entity size criterion of $5.5 million in combined annual gross receipts and does not qualify as a small business. Nine of the 18 RCRs are shoreside processing entities and were evaluated under the seafood processor size criteria.

At the time that NMFS conducted the analysis for the IRFA, the SBA defined a seafood processor as a small entity if that entity was independently owned and operated, not dominant in its field of operation, and had a combined annual employment of fewer than 500 employees. On January 26, 2016, the SBA issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). SBA's final rule modified the size standard for "seafood product preparation and packaging" (NAICS code 311710) that applies to seafood processors. SBA's final rule modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. In this FRFA, NMFS has analyzed the nine RCRs operating as seafood processors using the revised definition of a small entity. The new definition of a small entity did not change the number of seafood processors classified as small. NMFS estimates that three of the nine RCRs classified as seafood processors are small entities. Cumulatively, NMFS estimates that 11 of the 18 RCRs operating across all of the business size categories are small entities.

Reporting, Recordkeeping and Other Compliance Requirements

This rule requires modifications to the current recordkeeping and reporting requirements for IFQ Program and CR Program cost recovery in the Alaska Cost Recovery and Observer Fee collection (OMB Control Number 0648–0727). Specifically, this rule eliminates the option for payment by credit card using the paper fee submission form submitted to NMFS by mail or facsimile. Beginning with the 2020 cost recovery fee billing cycle, the paper fee submission form will be eliminated completely for the CR Program as permit holders will be required to submit all cost recovery fee payments electronically through the pay.gov or Fedwire systems. For the IFQ Program, beginning in 2020, the paper fee submission form will be revised to specify that all fee payments must be made electronically through pay.gov or the Fedwire systems.

Description of Significant Alternatives to This Rule That Minimize Economic Impacts on Small Entities

The Magnuson-Stevens Act requires that participants in LAPP and CDQ programs pay up to three percent of the ex-vessel value of the fish they are allocated to cover specific costs that are incurred by the management agencies as a direct result of implementing the programs. NMFS has identified this rule as necessary to improve data security procedures for permit holders' financial information and to reduce administrative costs of processing cost recovery payments. There are no alternatives that, consistent with applicable law, will accomplish the objectives of this rule and result in lower adverse economic impacts on directly regulated small entities.

NMFS considered eliminating the submission of credit card payment information by phone, in person, facsimile, and mail and retaining the use of paper checks and money orders as authorized payment methods under Alternative 2 in the RIR. However, Alternative 2 failed to meet the objective of reducing administrative costs associated with administering cost recovery because processing these payments results in a greater staff burden than processing payments made by the pay.gov or Fedwire systems (see Section 3.7 of the RIR). NMFS also considered Alternative 3, which would have simultaneously implemented both the elimination of credit card payment by phone, in person, facsimile, and mail, and the elimination of paper check and money order payment (see Section 3.8 of the RIR). However, NMFS rejected Alternative 3 in favor of Alternative 3 Option 1, which provided accommodation for the transition costs to permit holders in complying with the rule by delaying full implementation of the changes until the applicable cost recovery fee payment due date in 2020. NMFS determined that Alternative 3 Option 1 provides an opportunity for the permit holders to become familiar with either pay.gov or Fedwire and change to a new payment method. Additionally, Alternative 3 Option 1 spreads out any transition costs for NMFS staff in providing customer service to help permit holders affected by the change (see Section 3.8.1 of the RIR).

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0727. Public reporting burden per response is estimated to average one minute for electronic fee submission and 30 minutes for non-electronic fee submission. Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 15, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR parts 679 and 680 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.45, revise paragraphs (a)(4)(ii) through (iv) to read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(4) * * *

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the IFQ permit holder.

(iv) *Payment method*—(A) Prior to December 1, 2019, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after December 1, 2019, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

§ 680.5 [Amended]

■ 4. In § 680.5, remove paragraph (g)(3)(iii).

■ 5. In § 680.44, revise paragraphs (a)(4)(iii) and (iv) to read as follows:

§ 680.44 Cost recovery.

(a) * * *

(4) * * *

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the RCR permit holder.

(iv) *Payment method*—(A) Prior to June 1, 2020, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after June 1, 2020, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

* * * * *

[FR Doc. 2016–09308 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 78
Friday, April 22, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AO–FV–16–0016; AMS–SC–16–0011; SC16–989–1]

Raisins Produced From Grapes Grown in California; Hearing on Proposed Amendment of Marketing Order No. 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 989 (order) that regulates the handling of raisins grown in California. Five amendments are proposed by the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. These proposed amendments would: Authorize production research; establish new nomination procedures for independent grower member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different markets; and add a continuance referenda requirement.

In addition, the Agricultural Marketing Service (AMS) proposes two amendments. These amendments would remove order language pertaining to volume regulation and reserve pool authority and would establish term limits for Committee members. In addition, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. These proposed amendments are intended to update the order to reflect past changes in the industry and potential future changes, and to improve the operation and administration of the order.

DATES: The hearing dates are May 3 and 4, 2016, 9:00 a.m. to 5:00 p.m.; and continuing on May 5, 2016, at 9:00 a.m., if necessary, in Clovis, California.

ADDRESSES: The hearing will be held at the Hilton Garden Inn Clovis, 520 W Shaw Ave., Clovis, CA 93612.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Michelle Sharrow, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Melissa.Schmaedick@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov*.

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Committee on January 27, 2016, and submitted to USDA on February 2, 2016. After reviewing the proposals and other information submitted by the Committee, USDA made a determination to schedule this matter for hearing.

The proposed amendments to the order recommended by the Committee are summarized as follows:

1. Amend § 989.53 to authorize production research.
2. Amend §§ 989.29 and 989.129 to authorize separate nominations for independent grower member and independent grower alternate member seats.
3. Amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality. A corresponding change would also revise the heading prior to § 989.58 to include quality.
4. Amend § 989.59 to add authority to establish different regulations for different markets.
5. Amend § 989.91 to require continuance referenda.
6. Amend the order to remove volume regulation and reserve pool authority. This would include: Removing §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173 and 989.210; and, redesignating § 989.70 as § 989.96. Corresponding changes would also remove the following headings:

"Volume Regulation" prior to §§ 989.65; "Volume Regulation" prior to § 989.166; and, "Subpart—Schedule of Payments" prior to § 989.401.

7. Amend § 989.28 to establish term limits.

The Committee works with USDA in administering the order. These proposals submitted by the Committee have not received the approval of USDA. The Committee believes that its proposed amendments would update the order to address changes that have occurred in the industry and potential changes that could occur in the future. The amendments are intended to improve the operation and administration of the order.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing or to correct minor inconsistencies and typographical errors.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED BY GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Raisin Administrative Committee:

Proposal Number 1

■ 3. In § 989.53(a), revise the introductory text to read as follows:

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

* * * * *

Proposal Number 2

■ 4. In § 989.29:

■ a. Revise paragraph (b)(2)(ii);

■ b. Redesignate paragraph (b)(2)(iii) as paragraph (b)(2)(iv);

■ c. Add a new paragraph (b)(2)(iii); and

■ d. Revise newly redesignated paragraph (b)(2)(iv).

The revisions and addition read as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) Each such producer whose name is offered in nomination for producer member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. Similarly, each such producer whose name is offered in nomination for producer alternate member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer member candidate receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee until nominees for all producer member positions have been filled. Similarly, the producer alternate member candidate receiving the highest number of votes shall be designated as the first alternate member nominee, the second highest shall be designated as the second alternate member nominee until nominees for all member positions have been filled.

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member seat may be nominated to fill vacant alternate member seats. Member seat nominees shall indicate, prior to the nomination vote, whether they are willing to accept nomination for an alternate seat in the event they are not nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

■ 5. Section 989.129 is revised to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled in its district.

Proposal Number 3

■ 6. In § 989.58:

■ a. Revise the heading prior to this section, and

■ b. Revise paragraphs (a), (b), (d)(1) and (e)(1).

The revisions read as follows:

Grade, Quality, and Condition Standards

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the committee may establish, with the approval of the Secretary, in applicable rules and regulations: *Provided,* That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: And *provided further,* That a handler may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade, quality, and condition standards for natural condition raisins.* The committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

* * * * *

(d) * * *

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of free tonnage raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible nonnormal outlets. The handler shall be reimbursed by the committee for inspection costs incurred by him and applicable to pool tonnage held for the account of the committee. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards: *Provided,* That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

* * * * *

(e) * * *

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e)(2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

* * * * *

■ 7. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade, quality, and condition standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: *Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. And *provided further,* That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste.

(b) The committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

* * * * *

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and inspection to be made of such raisins to determine whether they meet the then applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California free tonnage any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

* * * * *

(g) *Exemption of experimental and specialty packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

■ 8. Section 989.61 is revised to read as follows:

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the Act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the act.

Proposal Number 4

■ 9. Section 989.59 is further amended by revising paragraph (a) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade, quality, and condition standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: *Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. And *provided further,* That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

* * * * *

Proposal Number 5

■ 10. In § 989.91:

■ a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and;

■ b. Add a new paragraph (c).

The addition to read as follows:

§ 989.91 Suspension or termination.

* * * * *

(c) No less than two crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such termination shall be announced on or before the end of the crop year.

* * * * *

Proposals submitted by USDA:

Proposal Number 6

■ 11. Remove §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401. Remove the headings "Volume Regulation" prior to §§ 989.65, "Volume Regulation" prior to § 989.166, and "Subpart—Schedule of Payments" prior to § 989.401.

■ 12. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

Producer means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

■ 13. In § 989.53(a), remove the text that follows paragraph (a)(5).

■ 14. In § 989.54:

■ a. Remove paragraphs (a) through (d) and (g);

■ b. Remove paragraph (e)(4);

■ c. Redesignate paragraphs (e)(5) through (e)(10) as (e)(4) through (e)(9), respectively;

■ d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and

■ e. Revise newly redesignated paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5) and (c).

The revisions read as follows:

§ 989.54 Marketing policy.

(a) Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy, the Committee may give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

* * * * *

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

* * * * *

(c) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

■ 15. In § 989.58, further revise paragraphs (d)(1), and (e)(4) to read as follows:

§ 989.58 Natural condition raisins.

* * * * *

(d) * * *

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of natural condition raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible nonnormal outlets. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards: *Provided,* That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

* * * * *

(e) * * *

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned.

* * * * *

■ 16. In § 989.59, further revise paragraph (e) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

* * * * *

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of

California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

* * * * *

■ 17. Section 989.60(a) is revised to read as follows:

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade raisins, free from any or all regulations, for uses in non-normal outlets.

* * * * *

■ 18. Redesignate § 989.70 as § 989.96.

■ 19. Section 989.73 (b) is revised to read as follows:

§ 989.73 Reports.

* * * * *

(b) *Acquisition reports.* Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

(1) The total quantity of standard raisins acquired;

(2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and

(3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

* * * * *

■ 20. Section 989.79 is revised to read as follows:

§ 989.79 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than 5 days if warranted by a late crop.

■ 21. In § 989.80, revise paragraphs (a) through (c) to read as follows:

§ 989.80 Assessments.

(a) Each handler shall pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

■ 22. Section 989.84 is revised to read as follows:

§ 989.84 Disposition limitation.

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

■ 23. Section 989.158(c)(4)(i) is revised to read as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c) * * *

(4) * * *

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including email. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

* * * * *

■ 24. In § 989.173:

■ a. Remove paragraphs (b)(2)(ii), (f) and (g)(1)(ii);

■ b. Redesignate paragraphs (b)(2)(iii), (g) and (g)(1)(iii) as paragraphs (b)(2)(ii), and (f)(1)(ii), respectively; and

■ c. Revise paragraphs (a), (b)(2)(i), newly redesignated paragraph (b)(2)(ii), (c)(1), (d)(1), (d)(1)(v), and newly redesignated paragraph (f).

The revisions read as follows:

§ 989.173 Reports.

(a) *Inventory reports.* Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. *Provided,* That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary and which the Committee shall specify in its request.

(b) * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

* * * * *

(c) * * *

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within the State of California between plants of any such handler and from such handler to other handlers): *Provided,* That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

* * * * *

(d) * * *

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

* * * * *

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

* * * * *

(f) * * *

(1) * * *

(i) The quantity of raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(ii) * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

* * * * *

(3) Disposition report of organically-produced raisins. No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

* * * * *

■ 25. In § 989.210:

■ a. Remove paragraphs (b), (c) and (e);

■ b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and

■ c. Revise newly redesignated paragraph (b).

The revisions read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

* * * * *

(b) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

* * * * *

Proposal Number 7

■ 26. In § 989.28:

■ a. Redesignate the introductory text as paragraph (a);

■ b. Revise newly redesignated paragraph (a); and

■ c. Add paragraph (b).

The revisions and addition read as follows:

§ 989.28 Term of office.

(a) The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years; *Provided,* That each such member and alternate member shall continue to serve until their successor is selected and has qualified.

(b) Representatives may serve up to four consecutive, two-year terms of office. In no event shall any representative serve more than eight consecutive years on the Committee. For purposes of determining when a representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment.

Proposal Number 8

Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 14, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–09144 Filed 4–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5306; Directorate Identifier 2015–SW–010–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117 C–2 helicopters. This proposed AD would require inspecting each terminal lug and replacing any lug that has discoloration, corrosion, incorrect crimping, or incorrect installation. This proposed AD is prompted by the discovery that terminal lugs with incorrect crimping may have been installed on these helicopters. The proposed actions are intended to detect incorrectly installed or crimped terminal lugs and prevent contact resistance and reduced gastightness between the wire and terminal lug, subsequent loss of electrical power, and an electrical fire.

DATES: We must receive comments on this proposed AD by June 21, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5306; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2015–0044, dated March 13, 2015, to correct an unsafe condition for certain serial-numbered Airbus Helicopters Model MBB–BK117 C–2 helicopters. EASA advises that terminal lugs with incorrect crimping may have been installed on some helicopters in production, and that an incorrect crimping die or crimp tool setting may have been used to terminate the lugs. According to EASA, incorrect crimping may adversely affect contact resistance and gastightness of the contact between the wire and the terminal lug. EASA further advises that this condition, if not detected and corrected, could lead to the loss of electrical power during flight. Because of this, the EASA AD requires a one-time visual inspection of the terminal lugs and replacement of affected lugs if incorrect crimping is found.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–24A–013, Revision 1, dated November 25, 2014 (ASB). The ASB specifies a visual inspection of the terminal lugs in the distribution and diode boxes for correct crimping, damage, discoloration, corrosion, and correct installation. If any deviation is detected, the terminal lug must be replaced. The ASB also specifies reporting certain information to Airbus Helicopters.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would require, within 100 hours time-in-service or 12 months, whichever occurs first, inspecting each terminal lug for discoloration and corrosion, and for correct crimping and correct installation. If a terminal lug is not correctly crimped or installed or if it has any discoloration or corrosion, this proposed AD would require replacing it before further flight.

Costs of Compliance

We estimate that this proposed AD would affect 183 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. We estimate about 9 work-hours to inspect the terminal lugs for a cost of $765 per helicopter and $139,995 for the U.S. operator fleet. The cost to replace a lug is minimal.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2016–5306; Directorate Identifier 2015–SW–010–AD.

(a) Applicability

This AD applies to Model MBB–BK 117 C–2 helicopters, certificated in any category, with a serial number as listed in the Planning Information, paragraph 1.A.1, of Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–24A–013, Revision 1, dated November 25, 2014 (ASB).

(b) Unsafe Condition

This AD defines the unsafe condition as a terminal lug with incorrect crimping. This condition could result in contact resistance and reduced gastightness between the wire and terminal lug and a subsequent loss of electrical power, which could cause an electrical fire.

(c) Comments Due Date

We must receive comments by June 21, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 100 hours time-in-service or 12 months, whichever occurs first:

(1) Using a mirror, inspect each terminal lug for discoloration and corrosion, and for correct crimping and correct installation in accordance with the Accomplishment Instructions, Table 1, and the examples in Figure 1 through Figure 5 of the ASB.

(2) If a terminal lug is not correctly crimped or installed or if it has any discoloration or corrosion, replace it before further flight.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0044, dated March 13, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 24 Electrical Power.

Issued in Fort Worth, Texas, on April 13, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–09237 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4074; Airspace Docket No. 15–AWP–16]

Proposed Amendment of Class E Airspace, Truckee, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice of proposed rulemaking would establish Class E surface area airspace within a 4.2-mile radius of Truckee-Tahoe Airport, Truckee, CA, to increase safety and enhance existing instrument flight rules (IFR) procedures in the immediate vicinity of Truckee-Tahoe Airport, Truckee, CA. In an NPRM published in the **Federal Register** on December 18, 2015, the FAA proposed to amend Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport. The FAA concurs with a comment received regarding the proposal, and finds establishing Class E surface area airspace along with the proposed Class E airspace modification is warranted for the safety and management of IFR operations.

DATES: Comments must be received on or before June 6, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify Docket No. FAA–2015–4074/Airspace Docket No. 15–AWP–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Truckee-Tahoe Airport, Truckee, CA.

Comments Invited

Interested parties are invited to participate in this supplemental proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2015–4074/Airspace Docket No. 15–AWP–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2015–4074/Airspace Docket No. 15–AWP–16". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On December 18, 2015, the FAA published in the **Federal Register** an NPRM proposing to modify Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport, Truckee, CA (80 FR, 78988) FAA–2015–4074. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the Truckee-Tahoe Airport District presenting safety concerns with regard to existing Instrument Flight Rules procedures and current aircraft operations, especially when considering the surrounding terrain. The commenter suggested the establishment of Class E surface area airspace within 4.2 miles of Truckee-Tahoe Airport to improve the safety of the existing airspace and operations. The FAA considered this proposal and determined the density and complexity of existing airport traffic and operations is sufficient to establish Class E surface area airspace.

The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace extending upward from the surface within a 4.2–mile radius of Truckee-Tahoe Airport, Truckee, CA. This supplemental proposal adds to the NPRM amending Class E airspace extending upward from 700 feet above the surface, published in the **Federal Register** [80 FR 78988, December 18, 2015].

Class E airspace designated as surface areas are published in paragraph 6002 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

AWP CA E2 Truckee, CA [New]

Truckee-Tahoe Airport, CA
(Lat. 39°19′12″ N., long. 120°08′22″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of Truckee-Tahoe Airport.

Issued in Seattle, Washington, on April 15, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–09300 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–4236; Airspace Docket No. 16–ASW–5]

Proposed Revocation of Class E Airspace; Lake Providence, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace extending upward from 700 feet above the surface at Byerley Airport, Lake Providence, LA. The decommissioning of non-directional radio beacons (NDB) and cancellation of Standard Instrument Approach Procedures (SIAPs) have made this action necessary for continued safety and management within the National Airspace System.

DATES: Comments must be received on or before June 6, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–4236; Airspace Docket No. 16–ASW–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E airspace at Byerley Airport, Lake Providence, LA.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–4236/Airspace Docket No. 16–ASW–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_* *traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class E airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Byerley Airport, Lake Providence, LA, and within 2.5 miles each side of the 004° bearing from the Lake Providence RBN extending from the 6.3 mile radius to 7.1 miles north of the airport at Lake Providence, LA. This action is necessary due to the cancellation of Standard Instrument Approach Procedures (SIAPs), and controlled airspace is no longer necessary due to the decommissioning of the NDB and cancellation of the NDB approach at Byerley Airport, Lake Providence, LA.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW LA E5 Lake Providence, LA (Removed)

Issued in Fort Worth, Texas, on March 31, 2016.

Robert W. Beck,

Manager, Operations Support Group, Central Service Center.

[FR Doc. 2016–08770 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2015–D–3719]

Draft Guidances Relating to the Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Rescheduling of Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of rescheduling of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a 2-day public hearing to obtain input on four draft guidance documents relating to the regulation of human cells, tissues, and cellular and tissue-based products (HCT/Ps). FDA had announced a 1-day public hearing for April 13, 2016, to obtain input on the guidances, but on February 29, 2016, announced that due to considerable interest in the public hearing and to give stakeholders additional time to provide comments to the Agency, the hearing was postponed. FDA also stated its intent to extend the comment period for the four draft guidance documents and to schedule a scientific workshop to identify and discuss the scientific considerations and challenges to help inform the development of HCT/Ps subject to premarket approval, including stem cell-based products. FDA will consider information it obtains from the public hearing in the finalization of the four draft guidance documents.

DATES: The public hearing will be held on September 12 and 13, 2016, from 9 a.m. to 5 p.m. The hearing on September 13 may be extended or end early depending on the number of speakers scheduled. Persons (including FDA employees) seeking to view the hearing via a live Webcast are not required to register. Persons (including FDA employees) seeking to attend in person or to attend and speak at the public hearing must register by June 1, 2016.

FDA will notify registered speakers of their scheduled times, and make available an agenda at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on or before July 1, 2016. Once FDA notifies registered speakers of their scheduled times, speakers should submit an electronic copy of their presentation to *CBERPublicEvents@fda.hhs.gov* by August 1, 2016. Section IV of this document provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until September 27, 2016.

ADDRESSES: The public hearing will be held at the National Institutes of Health (NIH), 9000 Rockville Pike, Bldg. 10, Masur Auditorium, Bethesda, MD 20892. Entrance for the public hearing attendees and speakers (non-FDA employees) is through Bldg. 66 (Gateway Center), where routine security check procedures will be performed. For parking and security information, please refer to *http://www.nih.gov/about-nih/visitor-information.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3719 for "Draft Guidances Relating to the Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Rescheduling of Public Hearing; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

A link to the live Webcast of this public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on the day of the public hearing. Persons seeking to view the hearing via the live Webcast are not required to register. A video record of the public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm.* A video record of the public hearing will be available at the same Web address for 1 year.

FOR FURTHER INFORMATION CONTACT: Lori Jo Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911, *lori.olsenchurchyard@fda,hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

HCT/Ps are defined in § 1271.3(d) (21 CFR 1271.3(d)) as articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient. FDA has implemented a risk-based approach to the regulation of HCT/Ps. Under the authority of section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA established regulations for all HCT/Ps to prevent the introduction, transmission, and spread of communicable diseases. These regulations can be found in part 1271. HCT/Ps are regulated solely under section 361 of the PHS Act and part 1271, if they meet all of the following criteria (§ 1271.10(a)):

- The HCT/P is minimally manipulated;
- The HCT/P is intended for homologous use, as reflected by the labeling, advertising, or other indications of the manufacturer's objective intent;
- The manufacture of the HCT/P does not involve the combination of the cells or tissues with another article, except for water, crystalloids, or a sterilizing, preserving or storage agent, provided that the addition of water, crystalloids, or the sterilizing, preserving, or storage

agent does not raise new clinical safety concerns with respect to the HCT/P; and

- Either
  - ○ The HCT/P does not have a systemic effect and is not dependent upon the metabolic activity of living cells for its primary function, or
  - ○ The HCT/P has a systemic effect or is dependent upon the metabolic activity of living cells for its primary function, and is for the following uses:
    - ▪ Autologous,
    - ▪ Allogeneic, in a first-degree or second-degree blood relative, or
    - ▪ Reproductive.

If an HCT/P does not meet all of the criterial set forth under § 1271.10(a), the HCT/P will be regulated as a drug, device, and/or biological product under the Federal Food, Drug, and Cosmetic Act, and/or section 351 of the PHS Act (42 U.S.C. 262).

In certain circumstances as provided in § 1271.15, an establishment may not be required to comply with some or all of the requirements in part 1271. For example, an establishment is excepted from the requirements in part 1271 if it "removes HCT/P's from an individual and implants such HCT/P's into the same individual during the same surgical procedure" (§ 1271.15(b)).

II. Draft Guidances

As part of its commitment to public outreach and to explain the Agency's current thinking on the regulatory framework for HCT/Ps, FDA has issued the following four draft guidances:[1]

- Same Surgical Procedure Exception under 21 CFR 1271.15(b): Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry (Same Surgical Procedure Exception Draft Guidance);
- Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff (Minimal Manipulation Draft Guidance);
- Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry (Adipose Tissue Draft Guidance); and
- Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff (Homologous Use Draft Guidance).

The Same Surgical Procedure Exception Draft Guidance was announced in the **Federal Register** of October 23, 2014 (79 FR 63348), and provides answers to common questions regarding the scope of the exception. Comments were requested by December 22, 2014.

The Minimal Manipulation Draft Guidance was announced in the **Federal Register** of December 23, 2014 (79 FR 77012), and provides recommendations for meeting the § 1271.10(a)(1) criterion of minimal manipulation. Comments were requested by February 23, 2015.

The Adipose Tissue Draft Guidance was announced in the **Federal Register** of December 24, 2014 (79 FR 77414), and provides those who manufacture and use adipose tissue with recommendations for complying with the regulatory framework for HCT/Ps. Comments were requested by February23, 2015.

The Homologous Use Draft Guidance was announced in the **Federal Register** of October 30, 2015 (80 FR 66850), and provides recommendations for meeting the § 1271.10(a)(2) homologous use criterion. Comments were requested by April 29, 2016. Also in the **Federal Register** of October 30, 2015, FDA reopened the comment periods to FDA's public dockets on the three draft guidance documents: Same Surgical Procedure Exception Draft Guidance (Docket No. FDA–2014–D–1584; 80 FR 66847); Minimal Manipulation Draft Guidance (Docket No. FDA–2014–D–1696; 80 FR 66844), and the Adipose Tissue Draft Guidance (Docket No. FDA–2014–D–1856; 80 FR 66849). Comments were requested by April 29, 2016.

In the **Federal Register** of October 30, 2015 (80 FR 66845), FDA announced a public hearing in a notice entitled "Draft Guidances Relating to the Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Public Hearing; Request for Comments," which was to be held on April 13, 2016. Comments were requested by April 29, 2016.

On February 29, 2016, FDA postponed the public hearing to give stakeholders additional time to provide comments to the Agency. FDA also stated its intent to extend the comment period for the four draft guidance documents and to schedule a scientific workshop to identify and discuss the scientific considerations and challenges to help inform the development of HCT/Ps subject to premarket approval, including stem cell-based products.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the extension of the comment period for the four draft guidance documents. In a separate document, FDA is also announcing a public scientific workshop to identify and discuss scientific considerations and challenges to help inform the development of HCT/Ps subject to premarket approval, including stem cell-based products. FDA will provide a summary of the scientific workshop at the public hearing.

III. Purpose and Scope of the Public Hearing

The purpose of this public hearing is to obtain comments on the four draft guidances. FDA is seeking feedback on the four draft guidances, both general and specific, from a broad group of stakeholders, including tissue establishments, biological and device product manufacturers, health care professionals, clinicians, biomedical researchers, and the public. For example, FDA would like comments on the scope of the four draft guidances, including the particular topics covered, the particular questions posed, whether there are additional issues for which guidance would be helpful, and whether FDA's recommendations for each topic are sufficiently clear and consistent within and across documents to provide meaningful guidance to stakeholders. In addition, FDA welcomes comments that will enhance the usefulness and clarity of these documents.

FDA recommends that comments exclude discussion of products that do not meet the definition of an HCT/P, such as platelet-rich plasma and other blood products. FDA also recommends that stakeholders coordinate comments when possible, in order to allow for presentation of a wide range of perspectives within the allotted time of the hearing.

IV. Attendance and Registration

The NIH campus is a Federal facility with security procedures and limited seating. Attendance is free.

Persons (including FDA employees) seeking to view the hearing via a live Webcast are not required to register.

Persons (including FDA employees) who wish to attend in person, but not speak at the public hearing, must register at *https://www.eventbrite.com/e/part-15-hearing-on-draft-guidances-relating-to-the-regulation-of-hctps-registration-22921962206* on or before June 1, 2016, and provide complete contact information, including name, title, affiliation, email, and phone number. Those without email access may register by contacting Sherri Revell or Loni Warren Henderson at 240–402–8010. There will be no onsite registration for this hearing.

Persons (including FDA employees) who wish to attend and speak at the public hearing must register at *https://www.eventbrite.com/e/part-15-hearing-on-draft-guidances-relating-to-the-regulation-of-hctps-registration-22921962206* on or before June 1, 2016. Persons who wish to attend and speak at the public hearing will be required to provide complete contact information, including name, title, affiliation, email, and phone number. To help FDA organize the presentations, persons who wish to attend and speak must also indicate whether they are speaking on their own behalf or on behalf of an organization. If speaking on behalf of an organization, the name of the organization must be provided. Persons who wish to attend and speak must also indicate if they will be speaking on the draft guidance documents. Individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. There will be no open public session at the public hearing.

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[1] *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Tissue/default.htm.*

FDA will do its best to accommodate requests to speak at the public hearing and will determine the amount of time allotted for each oral presentation, and the approximate time that each oral presentation will be scheduled to begin. Multiple speakers from the same organization will be given one presentation slot for that organization. If the number of persons or organizations requesting to speak is greater than can be reasonably accommodated, FDA will close registration for speakers. FDA will notify registered speakers of their scheduled times, and make available an agenda at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on or before July 1, 2016. Once FDA notifies registered speakers of their scheduled times, presenters should submit an electronic copy of their presentation to *CBERPublicEvents@fda.hhs.gov* by August 1, 2016.

If you need special accommodations because of a disability, please contact Sherri Revell or Loni Warren Henderson at 240–402–8010 at least 7 days before the hearing.

A link to the live Webcast of this public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm* on the day of the public hearing. A video record of the public hearing will be available at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm*. A video record of the public hearing will be available at the same Web address for 1 year.

V. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner and the Center for Biologics Evaluation and Research.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section VI of this document). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *www.regulations.gov* and *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm462125.htm*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: April 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09372 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket Nos. FDA–2014–D–1584, FDA–2014–D–1696, FDA–2014–D–1856, and FDA–2015–D–3581]

Draft Guidances Relating to the Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Extension of Comment Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the draft guidance documents entitled "Same Surgical Procedure Exception: Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry"; "Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff"; "Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry"; and "Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff." The Agency is taking this action to allow interested persons additional time to submit comments and any new information.

DATES: FDA is extending the comment period on the four draft guidances announced in the **Federal Register** (see **SUPPLEMENTARY INFORMATION**). Submit either electronic or written comments by September 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–1584 for "Same Surgical Procedure Exception under 21 CFR 1271.15(b): Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry"; Docket No. FDA–2014–D–1696 for "Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff"; Docket No. FDA–2014–D–1856 for "Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry"; or Docket No. FDA–2015–D–3581 for "Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori Jo Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911, *lori.olsenchurchyard@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 2014 (79 FR 63348), FDA announced the availability of a draft document entitled "Same Surgical Procedure Exception under 21 CFR 1271.15(b): Questions and Answers Regarding the Scope of the Exception; Draft Guidance for Industry" dated October 2014.

In the **Federal Register** of December 23, 2014 (79 FR 77012), FDA announced the availability of a draft document entitled "Minimal Manipulation of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and Food and Drug Administration Staff" dated December 2014.

In the **Federal Register** of December 24, 2014 (79 FR 77414), FDA announced the availability of a draft document entitled "Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry" dated December 2014.

Following publication of these three notices of availability, FDA received requests to allow interested persons additional time to comment.

In the **Federal Register** of October 30, 2015 (80 FR 66850), FDA announced the availability of a draft document entitled "Homologous Use of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry and FDA Staff" dated October 2015.

In the **Federal Register** of October 30, 2015 (80 FR 66845), FDA announced a public hearing in a notice entitled "Draft Guidances Relating to the Regulation of Human Cells, Tissues, or Cellular or Tissue-Based Products; Public Hearing; Request for Comments".

The draft guidances on same surgical procedure, minimal manipulation, adipose tissue, and homologous use provide recommendations for complying with the regulatory framework for human cells, tissues, and cellular and tissue based products under 21 CFR part 1271 that were to be discussed during the part 15 (21 CFR part 15) hearing. In conjunction with the part 15 hearing and announcement of availability of the homologous use draft guidance, in the **Federal Register** of October 30, 2015 (80 FR 66847; 80 FR 66844; 80 FR 66849), FDA reopened the comment periods on the same surgical procedure, minimal manipulation, and adipose tissue draft guidances, respectively, to allow potential respondents time to thoroughly evaluate and address pertinent issues. Comments were requested by April 29, 2016. In this notice FDA is extending the comment period to September 27, 2016.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the rescheduling of a 2-day part 15 public hearing to September 12 and 13, 2016, to obtain input from stakeholders on the four issued draft guidance documents. In a separate document, FDA is also announcing a public scientific workshop to identify and discuss scientific considerations and challenges to help inform the development of human cells, tissues, and cellular and tissue-based products subject to premarket approval, including stem cell-based products.

Dated: April 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09366 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0618; FRL–9945–21–Region 4]

Air Plan Approval: Tennessee: Knox County VOC Limits Revision for Permits

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, submitted on March 14, 2014, through the Tennessee Department of Environmental Conservation on behalf of the Knox County Department of Air Quality Management (Knox County) to address changes to a Knox County regulation regarding permits. EPA is proposing to approve this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before May 23, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0618 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo or D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Farngalo can be reached at (404) 562–9152 and via electronic mail at *farngalo.zuri@epa.gov.* Mr. Akers can be reached at (404) 562–9089 and via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this issue of the **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: April 6, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–09160 Filed 4–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

[LLWO210000.16X.L16100000.PN0000]

RIN 1004–AE39

Resource Management Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On February 25, 2016, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule to amend existing regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The proposed rule would enable the BLM to more readily address landscape-scale resource issues, such as wildfire, habitat connectivity, or the demand for renewable and non-renewable energy sources and to respond more effectively to environmental and social changes. The proposed rule would further emphasize the role of science in the planning process and the importance of evaluating the resource, environmental, ecological, social, and economic conditions at the onset of planning. The proposed rule would affirm the important role of other Federal agencies, State and local governments, Indian tribes, and the public during the planning process, and would enhance opportunities for public involvement and transparency during the preparation of resource management plans. Finally, the proposed rule would make revisions to clarify existing text and use plain language to improve the readability of the planning regulations. This notice extends the public comment period for 30 days beyond the initial comment-period deadline.

DATES: Send your comments on this proposed rule to the BLM on or before May 25, 2016. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE39. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Leah Baker, Division Chief, Decision Support, Planning and NEPA, at 202–912–7282, for information relating to the BLM's national planning program or the substance of this proposed rule. For information on procedural matters or the rulemaking process, you may contact Charles Yudson at 202–912–7437. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment, you may submit your comments by any one of several methods listed in the **ADDRESSES** section above. Please make your comments as specific as possible by confining them to issues directly related to the content of the proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The proposed rule was published on February 25, 2016 (81 FR 9674), with a 60-day comment period closing on April 25, 2016. Since publication, the BLM has received requests to extend the comment period on the proposed rule. After considering these requests, the BLM determined that it is appropriate to grant the requests to extend the comment period, and the BLM is hereby extending the comment period on the rule for 30 days. The closing date of the extended comment period is May 25, 2016.

Janice M. Schneider,
Assistant Secretary, Land and Minerals Management.

[FR Doc. 2016–09439 Filed 4–21–16; 8:45 am]

BILLING CODE 4310–84–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

RIN 2700–AE31

NASA Federal Acquisition Regulation Supplement: Clarification of Award Fee Evaluations and Payments (NFS Case 2016–N008)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to clarify NASA's award fee process by incorporating terms used in award fee contracting; guidance relative to final award fee evaluations; release of source selection information; and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 21, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by NFS Case 2016–N008, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016–N008" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016–N008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016–N008" on your attached document.
- *Email: william.roets-1@nasa.gov.* Include NFS Case 2016–N008 in the subject line of the message.
- *Fax:* (202) 358–3082.
- *Mail:* NASA Headquarters (HQ), Office of Procurement, Contract and Grant Policy Division, Attn: Mr. William Roets, Suite 5M18, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. William Roets, NASA HQ, Office of Procurement, Contract and Grant Policy Division, Suite 5M18, 300 E Street SW., Washington, DC 20456–0001. Telephone 202–358–4483; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

NASA is proposing to revise the NFS to clarify NASA's award fee process. As part of the NASA Office of Procurement internal reviews and the NASA Office of the Inspector General (OIG) audit entitled "NASA's Use of Award Fee Contracts," Report Number IG–14–003, NASA is implementing revisions to NFS 1816.4 and 1852.216–77 to clarify NASA's award fee evaluation and payment processes.

II. Discussion

NASA is proposing the following revisions to clarify NASA's award fee process:

- Add new definitions section at NFS 1816.001. Definitions for Earned Award Fee and Unearned Award Fee are being added to provide clarity and consistency in how these terms are utilized in NASA's award fee evaluation process.
- Revise NFS 1816.405–273(b) to provide further management review for final award fee determinations that meet certain criteria as outlined in this rule's revised NFS text.
- Revise NFS 1816.405–273(c) to provide clarification regarding the release of source selection information that is included in the Contractor Performance Assessment Reporting System (CPARS).
- Revise NFS 1816.405–276(b) and 1852.216–77(c)(3) to clarify how provisional award fee payments are calculated in NASA end-item award fee contracts. The current NFS text describes this calculation as "limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score" and yet does not address how the first award fee evaluation period should be handled. To address this issue, NFS is being revised to read: "limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period, which is limited to 80 percent of the available award fee for that evaluation period."
- In addition, since the FAR removed clause 52.216–13 in Federal Acquisition Circular (FAC) 2005–17, NASA is removing references to this clause contained in NFS 1816.307, 1816.307–70, and 1852.216–89.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance largely clarifies NASA's award fee evaluation and payment process, which should result in a more consistent use and administration of award fees within NASA. These revisions should provide all entities, both large and small, with a positive benefit. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

An analysis of data in the Federal Procurement Data System (FPDS) revealed that award fee contracts are primarily awarded to large businesses with large dollar contracts. An analysis of FPDS data over the past three years (Fiscal Year (FY)2013 through FY2015) showed that an average of 157 award fee contracts were awarded at NASA per year, of which 33 (approximately 20%) were awarded to small businesses. Thus, the application of the award fee revisions contained in this rule do not apply to a substantial number of small entities.

The rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties shall submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016–N008), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 1816 and 1852

Government procurement.

Manuel Quinones,
NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1816 and 1852 are proposed to be amended as follows:

■ 1. The authority citation for parts 1816 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1816—TYPES OF CONTRACTS

■ 2. Add section 1816.001 to read as follows:

1816.001 Definitions.

As used in this part—

"Earned Award Fee" means the payment of the full amount of an award fee evaluation period's score/rating.

"Unearned Award Fee" means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor's earned award fee amount for that same evaluation period.

* * * * *

1816.307 [Amended]

■ 3. Amend section 1816.307 by removing paragraph (g)(1) in its entirety.

■ 4. Revise section 1816.307–70, in paragraph (f), to read as follows:

1816.307–70 NASA contract clauses.

* * * * *

(f) When FAR clause 52.216–7, Allowable Cost and Payment, is included in the contract, as prescribed at FAR 16.307(a), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

* * * * *

■ 5. Amend section 1816.405–273 by revising paragraphs (b) and (c) to read as follows:

1816.405–273 Award fee evaluations.

* * * * *

(b) *End Item Contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (*e.g.* 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the Fee Determination Official) shall review and concur in the final award fee determination. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information—see FAR 3.104". See FAR 42.1503(h) regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

* * * * *

■ 6. Amend section 1816.405–276 by revising the last sentence of paragraph (b) to read as follows:

1816.405–276 Award fee payments and limitations.

* * * * *

(b) * * * For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period which is limited to 80 percent of the available award fee for that evaluation period.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 1852.216–77 by revising the date of the clause and paragraph (c)(3). The revised text reads as follows:

1852.216–77 Award Fee for End Item Contracts.

* * * * *

Award Fee for End Item Contracts (Date)

* * * * *

(c)(1) * * *

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly*) basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [*insert applicable cite*]), except for the first evaluation period which is limited to [insert a percent not to exceed 80 percent] of the available award fee for that evaluation period. Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

* * * * *

■ 8. Amend section 1852.216–89 by revising the date of the clause, and the first sentence of the paragraph to read as follows:

1852.216–89 Assignment and Release Forms.

* * * * *

Assignment and Release Forms ([Date])

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment:

* * * * *

[FR Doc. 2016–09356 Filed 4–21–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160104009–6314–01]

RIN 0648–BF65

International Fisheries; Tuna and Tuna-Like Species in the Eastern Pacific Ocean; Fishing Restrictions Regarding Mobulid Rays

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C–15–04 (*Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area*) of the Inter-American Tropical Tuna Commission (IATTC). Per the Resolution, this rule would prohibit any part or whole carcass of mobulid rays (*i.e.,* the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*)) caught in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. In accordance with the Resolution, the proposed rule also includes requirements for release of mobulid rays. This proposed rule would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by May 23, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0035, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0035,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier "NOAA–NMFS–2016–0035" in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2016–0035 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS, West Coast Region, 562–980–4036.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: *https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.*

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States Under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by Title II of Public Law 114–81, directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard for the Secretary of the Department of Homeland Security, to promulgate such regulations as may be necessary to carry out the United States' international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

Resolution on Mobulid Rays

The IATTC adopted Resolution C–15–04 at its 89th meeting in July 2015 in response to the IATTC scientific staff's conservation recommendations related to requirements for release of mobulid rays and concern for the mortality of mobulid rays caught in the IATTC Convention Area. The main objective of Resolution C–15–04 is to promote conservation of mobulid rays by reducing incidental catch mortalities in IATTC fisheries in the EPO.

U.S. commercial fishing vessels in the EPO do not target mobulid rays or commonly catch mobulid rays incidentally. Five species of mobulid rays are typically caught in the EPO: The giant manta ray (*Manta birostris*) and the Chilean (*Mobula tarapacana*), Munk's (*M. munkiana*), spinetail (*M. japanica*), and smoothtail (*M. thurstoni*) devil rays. The International Union for Conservation of Nature's Red List of Threatened Species categorizes the giant manta ray as *vulnerable,* while the Munk's devil ray and the smoothtail devil ray are categorized as *near threatened.* The Chilean devil ray and the spinetail devil ray are considered *data deficient.* In 2013, the giant manta ray was listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora as an Appendix II species.

The Resolution calls for IATTC members and cooperating non-members (CPCs) to prohibit any part or whole carcass of mobulid rays (*i.e.,* the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*)) caught in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. The Resolution provides an exemption in cases where a mobulid ray is unintentionally caught and frozen as part of a purse seine vessel's operation. In that case, the Resolution provides that the vessel owner or operator must surrender the whole mobulid ray to a responsible governmental authority at the point of landing. This provision of the Resolution is implemented in the proposed regulations in consideration of the fact that the U.S. Government does not have the authority or the ability to regulate foreign government authorities. Consequently, NMFS proposes that U.S. purse seine vessel owners or operators that unintentionally catch and freeze a mobulid ray would be required to show the observer the mobulid ray, and then dispose of the mobulid ray at the direction of the governmental authority. Mobulid rays surrendered in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption.

The Resolution also requires that any mobulid ray (whether live or dead) caught in the IATTC Convention Area be promptly released unharmed, to the extent practicable, as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. Per the Resolution, the requirements for release include prohibitions on the gaffing of mobulid rays, the lifting of mobulid rays by the gill slits or spiracles, and the punching of holes through the bodies of mobulid rays (*e.g.,* to pass a cable through for lifting the mobulid ray). Specific to purse seine vessels, the Resolution also provides that large mobulid rays must be brailed out of the net using methods such as those recommended in Poisson *et al.* 2012,[1] which details safe practices to reduce the mortality of sharks and rays caught incidentally by tropical tuna purse seiners. Per the Resolution, large mobulid rays that cannot be released without compromising the safety of persons or the mobulid ray before being landed on deck must be returned to the water as soon as possible, preferably utilizing a ramp from the deck connecting to an opening on the side of the boat, or, if no such ramp is available, lowered with a sling or net. Poisson *et al.* describe the latter process of lowering a mobulid ray by using a piece of net or plastic canvas that can be lifted by the crane. The minimum size for the sling or net must be at least 25 feet in diameter. Poisson *et al.* further recommend that the crew, owner, or operator be prohibited from using bind wire tightly around the mobulid rays' body or inserting wire into their skin in order to tow or lift mobulid rays.

The Resolution requires the number of discards and releases of mobulid rays, indicating the status (dead or alive) to be recorded, through observer programs. Any mobulid ray disposed of, at the direction of the responsible governmental authority, must also be recorded. Observers on U.S. commercial fishing vessels for drift gillnet and longline gear in the IATTC Convention Area already record the catch and release status of mobulid rays. However, observers on purse seine vessels have only been recording the release of dead mobulid rays and will now be required to record the release of live mobulid rays.

The requirements of the Resolution do not apply to small-scale and artisanal fisheries that fish exclusively for domestic consumption and are flagged/registered by a developing CPC. Because the United States is not a developing nation, this exclusion need not be implemented in U.S. regulations.

Proposed Regulations for Mobulid Rays

This proposed rule would implement Resolution C–15–04, described above, for U.S. commercial fishing vessels used in the IATTC Convention Area. First, the proposed rule would prohibit any part or whole carcass of a mobulid ray caught by vessels owners or operators in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. Second, the proposed rule would require that the crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must follow the requirements for release that are described in the description of the Resolution (above) and incorporated into regulatory text. Regulations at 50 CFR 300.25 already require purse seine vessels to release all rays, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. This proposed rule would revise regulations at 50 CFR 300.25 to specify that there are other regulatory release requirements specifically for mobulid rays, as described above.

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[1] Poisson, F., A.L. Vernet, B. Séret, and L. Dagorn. 2012. Good practices to reduce the mortality of sharks and rays caught incidentally by the tropical tuna purse seiners. EU FP7 project #210496 MADE, Deliverable 6.2., 30p. Available online: *https://www.wcpfc.int/system/files/EB-IP-12-Good-practices-reduce-mortality-sharks-and-rays-caught-incidentally-tropical-tuna-purse-sei.pdf.*

Third, the proposed rule would provide an exemption in the case of any mobulid ray caught in the IATTC Convention Area on an observed purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold. In this circumstance, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the observer at the point of landing, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports the responsible governmental authority is NOAA Office of Law Enforcement, Western Division or Pacific Islands Division, or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies. NMFS is soliciting public comment on other possible methods of use for mobulid rays, including donation for scientific purposes or discard.

In addition, this proposed rule would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) made by title II of Public Law 114–81 (November 5, 2015). The proposed rule would update the purpose and scope in § 300.20 by clarifying that the regulations in the subpart are issued under the "amended" authority of the Tuna Conventions Act of 1950, and that the regulations implement "recommendations and other decisions" of the IATTC for the conservation and management of stocks of "tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species" in the IATTC Convention Area. The description of how NOAA implements IATTC recommendations and decisions by rulemaking in § 300.25 would also be revised to clarify that the Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard for the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the U.S. international obligations. In addition, to improve the readability of the regulatory text, this action would move several paragraphs of regulatory text related to bycatch in § 300.25(e) to a new § 300.27 that would be dedicated to incidental catch and retention requirements. Several paragraphs in the prohibitions at § 300.24 would be updated for consistency with the new section.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Numbers: 0648–0148, 0648–0214, and 0648–0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As described previously in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would implement IATTC Resolution C–15–04, which would establish restrictions on mobulid rays as detailed above. The proposed regulations would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act. Alternatively, the absence of the proposed action would not implement the Resolution or update the codified text.

On June 12, 2014, the Small Business Administration issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from $19.0 million to $20.5 million, Shellfish Fishing from $5.0 million to $5.5 million, and Other Marine Fishing from $7.0 million to $7.5 million. NMFS conducted its analysis for this action in light of the new size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. The small entities that would be affected by the proposed action are all U.S. commercial fishing vessels that may be used for IATTC fisheries in the IATTC Convention Area (*i.e.,* purse seine, longline, and large-mesh drift gillnet (DGN)).

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) Purse seine vessels with at least 363 metric tons (mt) of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. As of March 10, 2016, there are 15 size class 6 purse seine vessels on the IATTC Regional Vessel Register. The number of size class 6 purse seine vessels on the IATTC Regional Vessel Register has increased substantially in the past two years, due in part to uncertainty regarding fishing access pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (aka the South Pacific Tuna Treaty). In recent years, size class 6 purse seine vessels have landed most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Estimates of ex-vessel revenues for size class 6 purse seine vessels in the IATTC Convention Area since 2005 are confidential and may not be publicly disclosed because of the small number of vessels in the fishery. Since 2010, fewer than three coastal purse seine vessels targeted tunas; therefore, their landings and revenue are confidential. In 2014, eight coastal purse seine vessels landed 1,413 mt of tuna (ex-vessel value of about $1,535,000) in west coast ports.

Participation in the large-mesh DGN fishery has declined significantly over the years, from 78 vessels in 2000 to 18 in 2013. The large-mesh DGN fishery primarily targets swordfish and to a lesser extent common thresher shark. During 2003 to 2014, the average ex-vessel value of the landings by the large mesh DGN fishery remained near $1.8 million per year.

U.S. West Coast vessels with deep-set longline gear primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. U.S. West Coast-based longline vessels fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. Given this restriction, there has been fewer than three west coast-based vessels operating out of southern California ports since 2005; therefore, landings and ex-vessel revenue are confidential. Recently, the number of Hawaii-permitted longline vessels that have landed in west coast ports has increased from one vessel in 2006 to 14 vessels in 2014. In 2014, 621 mt of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately $247,857 per vessel.

The available logbook data from 2005 to 2014 does not show a record of mobulid rays caught in fisheries without observers. In fisheries with observers only a few interactions have been recorded over that same time frame. Since at least 2005, the observer coverage rates on class size 6 vessels, large mesh DGN vessels, and deep-set longline vessels in the EPO have been a minimum of 100, 20, and 20 percent, respectfully. In addition, since 2005 the following interactions have been recorded on vessels with observers: three mobulid rays were caught on size class 6 purse seine vessels, all of which were discarded dead because the observers do not record the discard of mobulid rays that are alive when released; two *Mobula spp.* and one *Manta spp.* released dead onboard DGN vessels; and the live release of one giant manta ray, one *Mobula spp.*, and two unspecified mobulid rays caught in the IATTC Convention area onboard longline vessels.

The proposed action is not expected to have a significant economic impact on a substantial number of small entities. This action is not expected to change the typical fishing practices of affected vessels or the income of U.S. vessels because these vessels do not target mobulid rays, and do not commonly catch mobulid rays, even incidentally. In those rare situations when vessels owners and operators do catch mobulid rays, there would be some additional time burden for releasing them by implementing the release requirements. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. This action is not likely to increase the economic or record keeping and reporting burden on U.S. vessel owners and operators. Accordingly, vessel income is not expected to be altered as a result of this rule. As a result, an Initial Regulatory Flexibility Analysis is not required, and was not prepared for this proposed rule.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: April 14, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended, (Act) and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area.

■ 3. In § 300.21, revise the introductory paragraph and add the definition for "Mobulid ray" in alphabetical order to read as follows:

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, the Act, and the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Antigua Convention, the definition in this section shall apply.

* * * * *

Mobulid ray means any animal in the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*).

* * * * *

■ 4. In § 300.24, revise paragraphs (e), (f), (h), (t), (w), and (x) and add paragraphs (cc) and (dd) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.27(a).

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation as required in § 300.27(b).

* * * * *

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.27(c).

* * * * *

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain on board, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.27(d).

* * * * *

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(e).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(f).

* * * * *

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(g).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(h).

■ 5. In § 300.25, revise paragraph (a), remove paragraph (e), and redesignate paragraphs (f) through (h) as (e) through (g), respectively, to read as follows:

§ 300.25 Eastern Pacific fisheries management.

(a) *IATTC recommendations and decisions.* The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international obligations under the Convention, Antigua Convention, and the Act, including recommendations and other decisions adopted by the IATTC.

* * * * *

■ 6. Section 300.27 is added to subpart C to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

(a) *Tuna retention requirements for purse seine vessels.* Bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all shark, billfish, ray (not including mobulid rays, which are subject to paragraph (g) of this section), *dorado* (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(c) *Sea turtle handling and release.* All purse seine vessels must apply special sea turtle handling and release requirements, as follows:

(1) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the sea turtle;

(2) If a sea turtle is entangled in the net, net roll shall stop as soon as the sea turtle comes out of the water and shall not resume until the sea turtle has been disentangled and released;

(3) If, in spite of the measures taken under paragraphs (c)(1) and (2) of this section, a sea turtle is accidentally brought on board the vessel alive and active, the vessel's engine shall be disengaged and the sea turtle shall be released as quickly as practicable;

(4) If a sea turtle brought on board under paragraph (c)(3) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(d) *Oceanic whitetip shark restrictions.* The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(e) *Whale shark restrictions for purse seine vessels.* Owners, operators, and crew of fishing vessels of the United States commercially fishing for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) if the animal is sighted prior to the commencement of the set or the attempted set.

(f) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release.

(g) *Mobulid ray restrictions.* The crew, operator, and owner of a U.S. commercial fishing vessel is prohibited from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area, except as provided in the following sentence. In the case of any mobulid ray caught in the IATTC Convention Area on an observed purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the observer at the point of landing, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports the responsible governmental authority is NOAA Office of Law Enforcement, Western Division or Pacific Islands Division, or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

(h) *Mobulid ray handling and release.* The crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must use the release procedures described in the following two paragraphs.

(1) No mobulid ray may be gaffed, no mobulid ray may be lifted by the gill slits or spiracles or by using bind wire against or inserted through the body, and no holes may be punched through the bodies of mobulid ray (*e.g.,* to pass a cable through for lifting the mobulid ray) .

(2) Applicable to purse seine operations, large mobulid rays must be brailed out of the net by directly releasing the mobulid ray from the brailer into the ocean. Large mobulid rays that cannot be released without compromising the safety of persons or the mobulid ray before being landed on deck, must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or lowered with a sling or net, using a crane if available. The minimum size for the sling or net must be at least 25 feet in diameter.

[FR Doc. 2016–09309 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 78
Friday, April 22, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee (RAC) will meet in Richfield, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvHAAS.*

DATES: The meeting will be held May 18, 2016 at 6 p.m. (MDT).

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Fishlake National Forest Supervisor's Office, 115 E 900 N, Richfield, Utah.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Fishlake National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Zapell, RAC Coordinator by phone at (435) 896–1070 or via email at *jzapell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review, prioroitze and recommend projects for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 6, 2016 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to John Zapell, Designated Federal Officer, 115 E. 900 N., Richfield, Utah 84701; or by email to *jzapell@fs.fed.us,* or via facsimile to 435–896–9347.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 15, 2016.

Mel Bolling,

Forest Supervisor.

[FR Doc. 2016–09353 Filed 4–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee (RAC) will meet in Richfield, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvHAAS.*

DATES: The meeting will be held May 11, 2016 at 6 p.m. (MDT).

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Fishlake National Forest Supervisor's Office, 115 E 900 N, Richfield, Utah.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Fishlake National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Zapell, RAC Coordinator by phone at (435) 896–1070 or via email at *jzapell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Welcome new members;
2. discuss reauthorization of the Act;
3. review roles and responsibilties;
4. review current members' status and the recruitment of new members;
5. elect a chairperson; and
6. schedule future meeting dates.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 2, 2016 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to John Zapell, Designated Federal Officer, 115 E. 900 N., Richfield, Utah 84701; or by email to *jzapell@fs.fed.us,* or via facsimile to 435–896–9347.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 15, 2016.

Mel Bolling,

Forest Supervisor.

[FR Doc. 2016–09362 Filed 4–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/srnf/workingtogether/advisorycommittee.*

DATES: The meeting will be held May 17, 2016, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District, Boardroom, 301 West Washington Boulevard, Crescent City, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest (NF) Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, RAC Coordinator, by phone at 707–441–3562 or via email at *hwright02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide updates regarding the status of Secure Rural Schools Program and Title II funding; and

2. Review and recommend potential projects eligible for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 12, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Lynn Wright, RAC Coordinator, Six Rivers NF Office, 1330 Bayshore Way, Eureka, California 95501; by email to *hwright02@fs.fed.us,* or via facsimile to 707–445–8677.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 14, 2016.

Merv George Jr.,

Forest Supervisor.

[FR Doc. 2016–09363 Filed 4–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Notice of Partial Rescission of Countervailing Duty Administrative Review, 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 22, 2016.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–7851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) for the period September 15, 2014, through December 31, 2014.[1] On November 30, 2015, the Department received a letter from the Rebar Trade Action Coalition (RTAC, or Petitioner)[2] requesting a review of 18 exporters and/or producers of subject merchandise.[3] On January 7,

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 67706 (November 3, 2015).

[2] Members of RTAC are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, and Byer Steel Corporation.

[3] *See* Letter from Petitioner regarding "*Steel Concrete Reinforcing Bar from Turkey:* Request for Administrative Review" (November 30, 2015), and Letter from Petitioner regarding "*Steel Concrete Reinforcing Bar from Turkey:* Clarification of Request for Administrative Review" (December 21, 2015). Additionally, on November 30, 2015, Colakoglu Metalurji A.S. (Colakoglu) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) each filed a request for an administrative review with the Department. *See* Letter from Colakoglu regarding "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* Colakoglu's Request for CVD Administrative Review" (November 30, 2015), and Letter from Icdas regarding "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* Icdas' Request for CVD Administrative Review" (November 30, 2015). Petitioner requested a review of Icdas. Colakoglu was not included in Petitioner's review request. These public documents and all other public documents and public versions of business proprietary documents for this administrative review are on file electronically via Enforcement and Compliance's Antidumping and

Continued

2016, the Department published a notice of initiation of administrative review for this CVD order.[4]

Between January 13, 2016, and February 8, 2016, the following companies notified the Department that they had no exports, sales, shipments, or entries of subject merchandise to the United States during the period of review (POR): Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege Celik), Ekinciler Demir ve Celik Sanayi A.S. (Ekinciler Demir), Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi (Mettech), Asil Celik Sanayi ve Ticaret A.S. (Asil Celik),[5] Duferco Celik Ticaret Limited (Duferco Celik), and DufEnergy Trading SA (formerly known as Duferco Investment Services SA) (DufEnergy).[6] For each company, we issued a "no shipments inquiry" message to U.S. Customs and Border Protection (CBP).[7] We did not receive any response from CBP within the customary ten days regarding any suspended entries from these particular companies during the POR.

On April 6, 2016, Petitioner submitted a timely withdrawal of its request for review of Ege Celik, Ekinciler Demir, Mettech, Asil Celik, Duferco Celik, and DufEnergy.[8]

Partial Rescission of the 2014 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. The Department published the *Initiation Notice* for this administrative review on January 7, 2016. Petitioner timely withdrew its request for a review of Ege Celik, Ekinciler Demir, Mettech, Asil Celik, Duferco Celik, and DufEnergy within the 90-day period. No other party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice,[9] we are rescinding this review of the CVD order on rebar from Turkey with respect to Ege Celik, Ekinciler Demir, Mettech, Asil Celik, Duferco Celik, and DufEnergy. The administrative review will continue with respect to all other firms for which a review was requested and initiated.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 15, 2014, through December 31, 2014, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 18, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–09416 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–DS–P

Countervailing Duty Centralized Electronic Service System (ACCESS).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016) (*Initiation Notice*).

[5] Also known as Asil Celik Sanayi ve Ticaret A S and/or Asil Celik Sanayi ve Ticaret AS. *See Initiation Notice,* 81 FR at 740.

[6] *See* Letter from Ege Celik regarding "*Certain Steel Concrete Reinforcing Bar from the Republic of Turkey (C–489–819):* CVD Administrative Review" (January 13, 2016); Letter from Ekinciler Demir regarding "*Certain Steel Concrete Reinforcing Bar from the Republic of Turkey (C–489–819):* CVD Administrative Review" (January 13, 2016; Letter from Mettech regarding "**Federal Register**/Vol. 81 No. 4/Thursday, January 7, 2016/Notices" (January 14, 2016); Letter from Asil Celik regarding "*Certain Steel Concrete Reinforcing Bar from the Republic of Turkey (C–489–819):* CVD Administrative Review" (January 18, 2016); Letter from Duferco Celik regarding "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* No Shipments Letter" (February 5, 2016); and Letter from DufEnergy regarding "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* No Shipments Letter" (February 8, 2016).

[7] CBP posted the messages on February 9, and February 11, 2016. *See* message numbers 6060301, 6040302, 6040303, 6040304, 6042303, and 6042304 available at *http://addcvd.cbp.gov* and also ACCESS.

[8] *See* Letter from Petitioner regarding "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* Withdrawal of Requests for Administrative Review" (April 6, 2016).

[9] *See, e.g., Certain Lined Paper Products from India: Notice of Partial Rescission of Countervailing Duty Administrative Review; 2014,* 81 FR 7082 (February 10, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review in part on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) for the period of review (POR) November 1, 2014, through October 31, 2015.

DATES: *Effective Date:* April 22, 2016.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2015, we published a notice of opportunity to request an administrative review of the antidumping duty order on diamond sawblades from the PRC for the POR November 1, 2014, through October 31, 2015.[1] On January 7, 2016, in response to timely requests from the petitioner[2] and Husqvarna (Hebei) Co., Ltd. (Husqvarna) and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on diamond sawblades from the PRC with respect to 36 companies, including Husqvarna.[3] On April 12, 2016, the petitioner and Husqvarna withdrew their requests for an administrative review for Husqvarna.[4]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 67706 (November 3, 2015).

[2] The petitioner in this review is Diamond Sawblades Manufacturers' Coalition.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016).

On January 27, 2016, the Department exercised its discretion to toll its administrative deadlines due to the closure of the Federal Government.[5] Thus, the deadline for withdrawing a request for an administrative review was extended by four business days to April 12, 2016.[6] Therefore, the withdrawals of the review requests filed on April 12, 2016, with respect to Husqvarna in this administrative review were timely.

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, "in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Because the petitioner and Husqvarna withdrew their review requests in a timely manner, and because no other party requested a review of Husqvarna, we are rescinding the administrative review in part with respect to Husqvarna.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Husqvarna, for which the review is rescinded, antidumping duties shall be assessed at the rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP within 15 days after publication of this notice.

Notifications to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 18, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–09417 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE080

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS Southeast Fisheries Science Center (SEFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the SEFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the SEFSC's application and request.

DATES: Comments and information must be received no later than May 23, 2016.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the SEFSC's application may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* The SEFSC is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is available at the same Web site.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

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[4] *See* the letters of withdrawals of requests for review from the petitioner and Husqvarna dated April 12, 2016.

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm 'Jonas'" dated January 27, 2016.

[6] *See* the memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Telephone Conversation Concerning Deadline for Withdrawing Review Request" dated April 1, 2016.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On April 6, 2016, NMFS received an adequate and complete application from the SEFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by the SEFSC. The requested regulations would be valid for five years from the date of issuance. The SEFSC plans to conduct fisheries research surveys in multiple geographic regions within the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. It is possible that marine mammals may interact with fishing gear (*e.g.,* trawls nets, longlines) used in SEFSC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, the SEFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, the SEFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SEFSC is the research arm of NMFS in the southeast U.S., including the Caribbean.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The SEFSC proposes to administer and conduct these survey programs over the five-year period.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the SEFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the SEFSC, if appropriate.

Dated: April 19, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–09352 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the South Atlantic; South Atlantic Fishery Management Council and Mid-Atlantic Fishery Management Council; Public Meeting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of correction of a public meeting notice.

SUMMARY: The South Atlantic Fishery Management Council, in conjunction with the Mid-Atlantic Fishery Management Council, will hold a Question and Answer (Q&A) public meeting to address cobia management issues in Kill Devil Hills, NC.

DATES: The Cobia Q&A public meeting will be held beginning at 6 p.m. on May 9, 2016.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn Outer Banks/Kitty Hawk, 5353 N. Virginia Dare Trail, Kitty Hawk, NC 27949; phone: (252) 261–1290; fax: (252) 255–0153. The meeting will be broadcast via webinar as it occurs. Registration is required and information will be posted on the South Atlantic Council's Web site at *www.safmc.net* as it becomes available.

Council addresses: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on April 15, 2016 (81 FR 22214). In the **SUPPLEMENTARY INFORMATION**, it stated that the 2015 recreational catch was 1,540,775 pounds, 123% over the recreational Annual Catch Limit (ACL) of 690,000 pounds. It should read the 2015 recreational catch was 1,540,775 pounds, 123% over the recreational Annual Catch Limit (ACL) of 630,000 pounds. All other previously published information remains the same.

Dated: April 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09426 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Survey of Gulf of Mexico (GOM) Captains and Crew Associated With the GOM Grouper-Tilefish Individual Fishing Quota Program.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 210.

Average Hours per Response: 30 minutes.

Burden Hours: 105.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect economic and attitudinal data from hired captains and crew regarding the performance of the GOM Grouper-Tilefish IFQ Program five years after its implementation. These data will be used to estimate the effects of the GT–IFQ Program on these stakeholders for the five-year program review mandated by the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq*). The population targeted by the economic survey is hired captains and crew that participate in the GOM Grouper-Tilefish fishery. In addition, the information will be used to strengthen and improve fishery management decision-making, and satisfy legal mandates under Executive Order 12866, the Regulatory Flexibility Act, the Endangered Species Act, the National Environmental Policy Act and other pertinent statues.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 18, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–09344 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Permit and Reporting Requirements for Non-Commercial Fishing in the Rose Atoll, Marianas Trench and Pacific Remote Islands Marine National Monuments.

OMB Control Number: 0648–0664.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 35.

Average Hours per Response: Permit applications, 15 minutes each; logsheets, 20 minutes each.

Burden Hours: 44.

Needs and Uses: This request is for extension of a current information collection.

The National Marine Fisheries Service (NMFS) manages fishing activities in the Rose Atoll Marine, Marianas Trench, and Pacific Remote Islands Marine National Monuments. Regulations at 50 CFR part 665 require the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess any management unit species in these monuments to hold a valid permit.

Regulations also require the owner and operator of a vessel that is chartered to fish recreationally for, take, retain, or possess, any management unit species in these monuments to hold a valid permit. The fishing vessel must be registered to the permit. The charter business must be established legally in the permit area where it will operate. Charter vessel clients are not required to have a permit.

The permit application collects basic information about the permit applicant, type of operation, vessel, and permit area. NMFS uses this information to determine permit eligibility. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of Fishery Ecosystem Plan measures.

Regulations also require the vessel operator to report a complete record of catch, effort, and other data on a NMFS logsheet. The vessel operator must record all requested information on the logsheet within 24 hours of the completion of each fishing day. The vessel operator also must sign, date, and submit the form to NMFS within 30 days of the end of each fishing trip.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 18, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–09343 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE576

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) *Crab* Plan Team (CPT) will meet May 9, 2016 through May 12, 2016.

DATES: The meeting will be held on Monday May 9, 2016, through Thursday May 12, 2016, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the Birch/Willow room at the Hilton Hotel, 500 W. 3rd Ave., Anchorage, Alaska 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, May 9, 2016 Through Thursday, May 12, 2016

The agenda includes final assessment on OFL (over fishing limit) and ABC (acceptable biological catch) catch for PIGKC (Pribilof Islands *Golden King Crab*) and WAIRKC (Western Aleutian *Red King Crab*), final Tier 5 Assessment and research foundation update for AIGKC (Aleutian Island *Golden King Crab*), model development and application to SMBKC (St. Matthew *Blue King Crab*) and BBRKC (Bristol Bay *Red King Crab*), model discussions and scenarios for September assessment for *Tanner Crab*, PIRKC (Pribilof Island *Red King Crab*) and *Snow Crab* and Essential Fish Habitat review and update, research priorities, and finalize Stock Assessment and Fishery Evaluation.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 19, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09364 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) and Highly Migratory Species Management Team (HMSMT) will hold a joint meeting by webinar, which is open to the public.

DATES: The HMSAS and HMSMT will meet by webinar on Thursday, May 12, 2016, from 1:30 to 3:30 p.m. Pacific Time, or when business for the day is complete.

ADDRESSES: To attend the HMSMT/HMSAS webinar visit this link: *http://www.gotomeeting.com/online/webinar/join-webinar*. Enter the Webinar ID: 109–140–403. Please enter your name and email address (required). After logging into the webinar, dial this TOLL number +1 (213) 929–4212 (not a toll-free number), enter the attendee phone audio access code 300–135–098, then enter your audio phone PIN (shown after joining the webinar). Participants are encouraged to use their telephone, as this is the best practice to avoid technical issues and excessive feedback. If you do not select "Use Telephone" after joining the webinar you will be connected to audio using your computer's microphone and speakers (VoIP). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 425 for technical assistance. A listening station will also be provided at the Pacific Council office.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Pacific Council, 503–820–2422.

SUPPLEMENTARY INFORMATION: The HMSMT and HMSAS will provide advice to Pacific Council-sponsored attendees to the Second North Pacific Albacore Management Strategy Evaluation Workshop sponsored by the International Scientific Committee for Tuna and Tuna-Like Species in the North Pacific Ocean (ISC). The workshop will be held May 24–25, 2016, in Yokohama, Japan. In January 2016, the Secretariat of the Western and Central Pacific Fisheries Commission (WCPFC) circulated a list of management objectives and related questions compiled by Dr. John Holmes, Chair of the ISC's Albacore Working Group based on input from members of the WCPFC's Northern Committee. (This document may be accessed at *http://www.pcouncil.org/wp-content/uploads/2016/02/F4_Att2_NorthernCommMgmtObjectives_MAR2016BB.pdf*.) The HMSAS and HMSMT will use this document as a reference for providing advice to the workshop attendees.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Technical Information and System Requirements

PC-based attendees: Windows® 7, Vista, or XP operating system required. Mac®-based attendees: Mac OS® X 10.5 or newer required. Mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet required (use GoToMeeting Webinar Apps).

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09427 Filed 4–21–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 5/22/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 2/19/2016 (81 FR 8486) and 3/4/2016 (81 FR 11520), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. The action will result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN(s)—Product Name(s):
8340–00–NIB–0019—Tarp, Standard, Polyethylene, 20′ x 25′, Grommets
8340–00–NIB–0020—Tarp, Heavy Duty, Polyethylene, 20′ x 25′, Grommets
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Mandatory for: Total Government Requirement
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: B-List

Service

Service Type: Custodial Service
Service Mandatory for: US Air Force, Air Force Institute of Technology/Air Force Research Laboratories, Wright-Patterson Air Force Base, OH
Mandatory Source(s) of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: Dept of the Air Force, FA8601 AFLCMC PZIO, Wright-Patterson Air Force Base, OH

Deletions

On 3/18/2016 (81 FR 14837–14838), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): 8940–00–131–8761—Dessert Powder, Pudding, Instant,Vanilla
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s): 7510–00–NIB–0573—Custom Planners & Accessory Kit 7520–01–496–5478—Custom Planners & Accessory Kit
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FSS Household and Industrial Furniture, Arlington, VA
NSN(s)—Product Name(s): 6645–01–516–9630—Slimline Wall Clock—12" Federal Logo—Putty Case
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 6645–04–000–3339—Clock, Wall (Postal Service Logo); 6645–04–000–3340; 6645–04–000–3341; 6645–04–000–3342; 6645–04–000–3344; 6645–4–000–4260; 6645–04–000–4261; 6645–04–000–4262; 6645–04–000–4263; 6645–04–000–4264; 6645–04–000–4265; 6645–04–000–4267; 6645–04–000 –4268
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: U.S. Postal Service
NSN(s)—Product Name(s): 7920–01–482–6034—Cloth, Cleaning, High Performance, Microfiber, Industrial Weight, Blue; 7920–01–482–6040—Cloth, Cleaning, High Performance, Microfiber, Blue; 7920–01–482–6042—Cloth, Cleaning, High Performance, Microfiber, Electronics, Platinum; 7920–01–482–6045—Cloth, Cleaning, Microfiber, Lens, Blue, 24/BX
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): MR 350—Containers, Storage, 12PG; MR 362—Set, Salad Bowl, Event Serverware; MR 363—Set, Pitcher and Tumbler, Event Serverware; MR 364—Set, Ice Bucket and Goblet, Event Serverware; MR 850—Spinner, Salad; MR 1194—Bottle, Water, Reusable, 26oz
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Defense Commissary Agency

Services

Service Type: Janitorial/Custodial Service
Service is Mandatory for: U.S. Border Patrol, Lynden Station Lynden, WA
Mandatory Source(s) of Supply: Lake Whatcom Residential and Treatment Center, Bellingham, WA
Contracting Activity: U.S. Customs and Border Protection, Border Enforcement Contracting Division, Washington, DC
Service Type: Mailroom Operation Service
Service is Mandatory for: U.S. Customs House: 220 NE. 8th Avenue, Portland, OR
Mandatory Source(s) of Supply: Portland Habilitation Center, Inc., Portland, OR
Contracting Activity: Dept of the Army, W071 ENDIST PORTLAND, Portland, OR
Service Type: Janitorial Service
Service is Mandatory for: Bldgs 736, 658 & 12737; Corner of Quartermaster & D Streets (#); 5th St, Fort Richardson, AK
Mandatory Source(s) of Supply: MQC Enterprises, Inc., Anchorage, AK
Contracting Activity: Dept of the Army, W2SN ENDIST ALASKA, Anchorage, AK
Service Type: Packaging Service
Service is Mandatory for: Hurlburt Field AFB, FL
Mandatory Source(s) of Supply: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: Dept of the Air Force, FA4417 1 SOCONS LGC, Hurlburt Field AFB, FL
Service Type: Preparation of Oil Sample Kits
Service is Mandatory for: Pensacola Naval Air Station, Pensacola, FL
Mandatory Source(s) of Supply: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: Dept of the Navy, Naval Air Warfare Center Air Div, Patuxent River, MD
Service Type: Janitorial/Custodial Service
Service is Mandatory for: Willow Grove Air Reserve Station Center, Bldg. 167 Willow Grove, PA

Mandatory Source(s) of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD
Service Type: Furnishings Management Service
Service is Mandatory for: Dover Air Force Base: Dover Air Force Base, DE
Mandatory Source(s) of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: Dept of the Air Force, FA4497 436 CONS LGC, Dover AFB, DE
Service Type: Food Service Attendant Service
Service is Mandatory for: Hanscom Air Force Base, Hanscom AFB, MA
Mandatory Source(s) of Supply: Work, Incorporated, Dorchester, MA
Contracting Activity: Dept of the Air Force, FA2835 AFLCMC HANSCOM PZI, Hanscom AFB, MA

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–09386 Filed 4–21–16; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and a service from the Procurement List that was previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on or Before:* 5/22/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 3206—Goody Hair Care Products—Stay Put Headbands sports 4ct
MR 3210—Goody Hair Care Products—Ouchless Elastic Long Thin
MR 3237—Goody Hair Care Products—Bobby Pin Box w/magnetic Top black
MR 3238—Goody Hair Care Products—Bobby Pin Box w/magnetic Top brown
MR 3244—Goody Hair Care Products—Comb, 7in Utility
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Defense Commissary Agency
NSN(s)—Product Name(s): 7195–01–567–9518—Bulletin Board, Fabric, 48″ x 36″, Plastic Frame 7195–01–484–0015—Bulletin Board, Granite Finish, 48″ x 36″, Aluminum Frame
Mandatory Source(s) of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activities: Department of Veterans Affairs, NAC, General Services Administration, FSS Household and Industrial Furniture, Arlington, VA
NSN(s)—Product Name(s): 8455–01–591–5248—Lapel Pin, Navy Retired, Dual Flag
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s): 7105–00–935–1845—Cover, Folding Cot
Mandatory Source(s) of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s): 1055–01–141–5205—Webbing
Mandatory Source(s) of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: Defense Logistics Agency Land and Maritime

Service

Service Type: Document Destruction
Mandatory for: Internal Revenue Service: St. Paul Headquarters, Minneapolis, MN Mandatory Source(s) of Supply: AccessAbility, Inc., Minneapolis, MN
Contracting Activity: Dept. of the Treasury, Washington, DC

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–09385 Filed 4–21–16; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0015]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is AAFES 0604.02, entitled “Unfair Labor Practice Claim/Charges Files.”

DATES: Comments will be accepted on or before May 23, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* ODCMO, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Attn: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed changes to the record system being amended are set forth in this notice. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

AAFES 0604.02

Unfair Labor Practice Claim/Charges Files (August 9, 1996, 61 FR 41572).

Reason: Based on a recent review of AAFES 0604.02 Unfair Labor Practice Claim/Charges Files it has been determined that records in this system will now be covered by AAFES 0602.04 Legal Office Management System; therefore, the system of records notice can be deleted.

[FR Doc. 2016–09414 Filed 4–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

DATES: Wednesday, June 8, 2016, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Herb Nelson, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the June 8, 2016 meeting is to review continuing and new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

Agenda for June 8, 2016

8:30 a.m. Convene/Opening Remarks, Approval of October 2015 Minutes—Dr. Joseph Hughes, Chair
8:35 a.m. Program Update—Dr. Herb Nelson, Acting Executive Director
8:50 a.m. Resource Conservation and Climate Change Overview—Dr. Herb Nelson, Acting Executive Director
9:00 a.m. RC:2245: Defense Coastal/Estuarine Research Program (DCERP)—Dr. Patricia Cunningham, RTI International, Research Triangle Park, NC
9:45 a.m. Break
10:00 a.m. RC:2245: Defense Coastal/Estuarine Research Program (DCERP)—Dr. Patricia Cunningham, RTI International, Research Triangle Park, NC
12:00 p.m. Lunch
1:00 p.m. Munitions Response Overview—Dr. Herb Nelson, Munitions Response, Program Manager
1:10 p.m. 16 MR04–001 (MR–2653): Multichannel Detection and Acoustic Color-Based Classification of Underwater UXO in Sonar (FY16 New Start)—Dr. Mahmood, Azimi-Sadjadi, Colorado State University, Fort Collins, CO
1:55 p.m. Break
2:05 p.m. Environmental Restoration Overview—Dr. Andrea Leeson, Environmental Restoration, Program Manager
2:10 p.m. 16 ER02–006 (ER–2625): Development of Toxicity Data to Support Toxicity Reference Values for Perfluorinated Compounds (FY16 New Start)—Dr. Michael Quinn, U.S. Army Public Health Command, Aberdeen Proving Ground, MD
2:55 p.m. Break
3:05 p.m. Strategy Session—Dr. Herb Nelson, Acting Executive Director
5:00 p.m. Public Discussion/Adjourn

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://www.facadatabase.gov/*. Time is allotted at the close of the meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: April 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–09408 Filed 4–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

Magnet Schools Assistance Program (MSAP)

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.

DATES:

Applications Available: April 22, 2016.

Deadline for Notice of Intent to Apply: May 9, 2016.

Deadline for Transmittal of Applications: June 1, 2016.

Deadline for Intergovernmental Review: August 8, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSAP provides grants to eligible local educational agencies (LEAs) and consortia of LEAs to support magnet schools under an approved, required or voluntary, desegregation plan. By supporting the development and implementation of magnet schools that reduce, eliminate, or prevent minority group isolation, these program resources can be used in pursuit of the objectives of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which supports State and local efforts to enable all elementary and secondary school students to achieve high standards. In particular, the MSAP provides an opportunity for eligible entities to provide students from varied backgrounds with the educational benefits of diversity and equitable access to a high-quality education that will enable all students to succeed academically.

Background: This background section highlights some design changes in the FY 2016 MSAP competition. Despite the potential benefits associated with integration, institutional and contextual barriers often prevent LEAs from integrating their schools in meaningful and impactful ways. Past experience has shown that these barriers often negatively impact schools that receive MSAP funding, shrinking the impact of the implemented services. As such, we have revised the program's selection criteria to place an increased emphasis on desegregation-related activities (including a selection criterion specifically related to desegregation), and a renewed focus on academic rigor. The competition also includes a new focus on the use of evidence. These shifts bring MSAP into greater alignment with the Every Student Succeeds Act (ESSA), which was signed into law on December 10, 2015; beginning in FY 2017, the ESSA will serve as the statutory framework for future MSAP competitions.

Research consistently demonstrates that concentrated poverty in schools negatively affects academic performance. Children who attend high-poverty schools have poorer academic outcomes than those who do not.[1] Conversely, studies have shown that socioeconomic diversity in school contributes to improved academic and life outcomes for students, and that the socioeconomic make-up of a school is one of the strongest predictors of whether or not a student will succeed academically.[2] Almost half of public elementary school students attend schools where most of the students are from lower income households, and Black and Latino students are disproportionately concentrated in these schools in almost every State.[3] Strategies that promote socioeconomic integration could have a profound impact on reducing the number of high-poverty schools in many districts across the country, which could in turn greatly improve academic achievement and close achievement gaps.[4]

In this competition, we are particularly interested in projects that seek to improve MSAP outcomes related to minority group isolation and academic achievement by implementing complementary strategies to increase the socioeconomic integration of schools in an effort to eliminate, reduce, or prevent minority group isolation. Therefore, we include an invitational priority for these types of projects. These proposals will help inform future MSAP competitions conducted under ESSA, which will include the statutory priority for projects proposing to increase racial integration by taking into account socioeconomic diversity in designing and implementing magnet school programs. We also encourage applicants to define socioeconomic status (such as family income, education level or other factors), and to describe how the applicant's approach to defining and using socioeconomic status connects to their efforts to eliminate, reduce, or prevent minority group isolation.

When proposing projects that seek to eliminate, reduce, or prevent minority group isolation and, if applicable, increase the socioeconomic integration of schools, we encourage all applicants to consult the "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools," released by the U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice on December 2, 2011.[5] This guidance provides some examples of approaches that may be considered, including school and program siting; grade realignment and feeder patterns; school zoning; open choice and enrollment; and inter- and intra-district transfers. We encourage applicants to consult legal counsel when considering which approaches might be best suited to a particular situation and in alignment with this program's objectives.

This competition is also designed to improve MSAP outcomes by supporting evidence-based strategies for eliminating, reducing, or preventing minority group isolation; increasing diversity; and improving academic achievement. For this reason, we include a selection factor that asks applicants to address the extent to which projects are grounded in a logic model (as defined in this notice) that connects the program's inputs to its intended outcomes.

In addition, we include a competitive preference priority for applicants that can support their proposed projects with evidence of promise (as defined in this notice). Such evidence will enable us to better understand the empirical connection between school districts that have systematically moved toward integration in the past and student outcomes that are relevant to MSAP. We are particularly interested in evidence-based strategies that promote racial integration by taking into account socioeconomic diversity.

Priorities: This competition includes five competitive preference priorities, one invitational priority within a competitive preference priority, and one stand alone invitational priority.

In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priorities 1, 2, and 3 are from the MSAP regulations (34 CFR 280.32). Competitive Preference Priority 4 is from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). Competitive Preference Priority 5 is from 34 CFR 75.226.

Competitive Preference Priorities: For FY 2016 these priorities are competitive preference priorities. Under 34 CFR 280.30(f) we will award up to 15 additional points to an application, depending on how well the applicant addresses Competitive Preference Priorities 1, 2, and 3. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional five points to an application, depending on how well the application addresses Competitive Preference Priority 4, and we will award an additional five points to an application that meets Competitive Preference Priority 5. Together, depending on how well the application meets these priorities, an application may be awarded up to a total of 25 additional points. Applicants may apply under any or all of the competitive preference priorities. The maximum possible points for each competitive preference priority are indicated in parentheses following the name of the priority. These points are in addition to any points the application earns under the selection criteria in this notice.

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[1] James S. Coleman, *Equality and Educational Opportunity* (Washington, DC: U.S. Department of Health, Education, and Welfare, 1966); Christopher Jencks, "The Coleman Report and Conventional Wisdom," in *On Equality of Educational Opportunity: Non-Racial Approaches to Integration*, eds. Frederick Mosteller and Daniel P. Moynihan (New York: Vintage Books, 1972), 69–115; Russell Rumberger and Gregory Palardy, "Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School," *Teacher College Record* 107, no. 9 (2005): 1999–2045; Laura B. Perry and Andrew McConney, "Does the SES of the School Matter? An Examination of Socioeconomic Status and Student Achievement using PISA 2003," *Teachers College Record* 112, no. 4 (2010).

[2] James S. Coleman, *Equality and Educational Opportunity;* Russell Rumberger and Gregory Palardy, "Does Segregation Still Matter?" 1999–2045.

[3] Susan Aud et al., *The Condition of Education 2011* (Washington, DC: U.S. Government Printing Office, 2011), Table A–28–1.

[4] Ann Mantil, Anne G. Perkins, and Stephanie Aberger, "The Challenge of High-Poverty Schools: How Feasible Is Socioeconomic School Integration?" in *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*, ed. Richard D. Kahlenberg (New York: The Century Foundation, 2012), 155–222.

[5] Available at: *www.ed.gov/ocr/letters/colleague-201111.pdf* and *www.ed.gov/ocr/docs/guidance-ese-201111.pdf*. Additional guidance from 2013 and 2014 available at *www.ed.gov/ocr/letters/colleague-201309.pdf* and *www.ed.gov/ocr/letters/colleague-201405-schuette-guidance.pdf*.

These priorities are:

Competitive Preference Priority 1—Need for Assistance (0 to 5 additional points).

The Secretary evaluates the applicant's need for assistance by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet schools project—*e.g.*, the type of program proposed, the location of the magnet school within the LEA—impacts the applicant's ability to successfully carry out the approved plan.

Competitive Preference Priority 2—New or Revised Magnet Schools Projects (0 to 5 additional points).

The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Competitive Preference Priority 3—Selection of Students (0 to 5 additional points).

The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

Competitive Preference Priority 4—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education (0 to 5 additional points).

Projects that are designed to improve student achievement (as defined in this notice) or other related outcomes by supporting local or regional partnerships to give students access to real-world STEM experiences and to give educators access to high-quality STEM-related professional learning.

Competitive Preference Priority 5—Supporting Strategies for which there is Evidence of Promise (0 or 5 additional points).

Projects that propose a process, product, strategy, or practice supported by evidence of promise.

Within this competitive preference priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Racial and Socioeconomic Integration Evidence of Promise.

We are especially interested in evidence of promise surrounding racial and socioeconomic integration.

Note: An applicant addressing Competitive Preference Priority 5 should clearly identify up to two research study citation(s) to be reviewed for the purposes of meeting this priority. In addition, the applicant should specify the intervention(s) in the identified study or studies that it plans to implement and the findings within the citation(s) that the applicant is requesting be considered as evidence of promise. At a minimum, applicants should provide the referenced citation(s), and a discussion of the relevant intervention(s) and findings, in the application narrative. The Department will not consider a study citation that an applicant fails to clearly identify for review.

An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or, in the application, include a copy of the full study in the Appendix. If the Department determines that an applicant provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time.

Under this competition we are particularly interested in applications that address the following invitational priority.

Invitational Priority: For FY 2016 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Socioeconomic Integration.

The Secretary encourages projects that propose to increase racial integration by taking into account socioeconomic diversity in designing and implementing magnet school programs. Projects may implement inter-district or intra-district integration strategies such as neighborhood preferences or weighted lotteries.

Definitions: All definitions are from 34 CFR 77.1(c) and the Supplemental Priorities.

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in paragraphs (i) and (ii) of this section are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

Student achievement means—

For grades and subjects in which assessments are required under section 1111(b)(3) of the Elementary and Secondary Act of 1965, as amended (ESEA): (1) A student's score on such assessments; and, as appropriate (2) other measures of student learning, such as those described in the subsequent paragraph, provided that they are rigorous and comparable across schools within a local educational agency (LEA).

For grades and subjects in which assessments are not required under section 1111(b)(3) of the ESEA: (1) Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; (2) student learning objectives; (3) student performance on English language proficiency assessments; and (4) other measures of student achievement that are rigorous and comparable across schools within an LEA.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: 20 U.S.C. 7231–7231j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 280. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $91,322,994.

Estimated Range of Awards: $700,000–$4,000,000 per budget year.

Estimated Average Size of Awards: $3,200,000 per budget year.

Maximum Award: $12,000,000. We will not fund an annual budget period exceeding $4,000,000 per budget year or $12,000,000 total. We may choose not to further review an application that proposes a one year budget period that exceeds $4,000,000.

Estimated Number of Awards: 8–10. We may make awards under this competition for the complete three-year (36-month) project period by front-loading all three budget periods using FY 2016 funds. Additional information regarding how we will fund this competition can be found on the MSAP Web site at *http://innovation.ed.gov/what-we-do/parental-options/magnet-school-assistance-program-msap/applicant-info-and-eligibility/.*

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs implementing a desegregation plan as specified in section III. 3 of this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* Applicants must submit with their applications one of the following types of desegregation plans to establish eligibility to receive MSAP assistance: (a) A desegregation plan required by a court order; (b) a desegregation plan required by a State agency or an official of competent jurisdiction; (c) a desegregation plan required by the Office for Civil Rights (OCR), United States Department of Education (Department), under Title VI of the Civil Rights Act of 1964 (Title VI); or (d) a voluntary desegregation plan adopted by the applicant and submitted to the Department for approval as part of the application. Under the MSAP regulations, applicants are required to provide all of the information required in 34 CFR 280.20(a) through (g) in order to satisfy the civil rights eligibility requirements found in 34 CFR 280.2(a)(2) and (b).

In addition to the particular data and other items for required and voluntary desegregation plans described in the application package, an application must include—

- Projected enrollment by race and ethnicity for magnet and feeder schools;
- Signed civil rights assurances (included in the application package); and
- An assurance that the desegregation plan is being implemented or will be implemented if the application is funded.

Required Desegregation Plans

1. Desegregation plans required by a court order. An applicant that submits a desegregation plan required by a court order must submit complete and signed copies of all court documents demonstrating that the magnet schools are a part of the approved desegregation plan. Examples of the types of documents that would meet this requirement include a Federal or State court order that establishes specific magnet schools, amends a previous order or orders by establishing additional or different specific magnet schools, requires or approves the establishment of one or more unspecified magnet schools, or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Desegregation plans required by a State agency or official of competent jurisdiction. An applicant submitting a desegregation plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the desegregation plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its desegregation plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Desegregation plans required by Title VI. An applicant that submits a desegregation plan required by OCR under Title VI must submit a complete copy of the desegregation plan demonstrating that magnet schools are part of the approved plan or that the plan authorizes the inclusion of magnet schools at the discretion of the applicant.

4. Modifications to required desegregation plans. A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the desegregation plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI desegregation plan to include different or additional magnet schools must submit the proposed

modification for review and approval to the OCR regional office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved desegregation plan. However, all applicants must submit proof of approval of all modifications to their plans to the Department by June 30, 2016. Proof of plan modifications should be mailed to the person and address identified under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Voluntary Desegregation Plans

A voluntary desegregation plan must be approved by the Department each time an application is submitted for funding. Even if the Department has approved a voluntary desegregation plan in an LEA in the past, the desegregation plan must be resubmitted for approval as part of the application.

An applicant's voluntary desegregation plan must describe how the LEA defines or identifies minority group isolation, demonstrate how the LEA will reduce, eliminate, or prevent minority group isolation for each magnet school in the proposed magnet school application, and, if relevant, at identified feeder schools, and demonstrate that the proposed voluntary desegregation plan is adequate under Title VI. For additional guidance on how an LEA can voluntarily reduce minority group isolation and promote diversity in an LEA in light of the Supreme Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.*, 551 U.S. 701 (2007), see the December 2, 2011, "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools" available on the Department's Web site at *www.ed.gov/ocr/docs/guidance-ese-201111.pdf.*

Complete and accurate enrollment forms and other information as required by the regulations in 34 CFR 280.20(f) and (g) for applicants with voluntary desegregation plans are critical to the Department's determination of an applicant's eligibility under a voluntary desegregation plan (specific requirements are detailed in the application package).

Voluntary desegregation plan applicants must submit evidence of school board approval or evidence of other official adoption of the plan as required by the regulations in 34 CFR 280.20(f)(2).

4. *Single-Sex Programs:* In addition to the normal MSAP grant review process, an applicant proposing to operate a single-sex magnet school or a coeducational magnet school that offers single-sex classes or extracurricular activities will undergo a separate and detailed review of its proposed single-sex educational program to determine compliance with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in *United States* v. *Virginia,* 518 U.S. 515 (1996), and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its regulations, including 34 CFR 106.34. This additional review is likely to require the applicant to provide additional fact-specific information about the single-sex program within the Department's timeframes for determining eligibility for funding. It is likely special conditions will be placed on any grant used to support a single-sex educational program. Please see the application package for additional information about an application proposing a single-sex magnet school or a coeducational magnet school offering single-sex classes or extracurricular activities.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EdPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.165A.

To obtain a copy from the program office, contact: Tiffany McClain, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W250, Washington, DC 20202–5970. Telephone: (202) 453–7200 or by email: *msap.team@ed.gov.* If you use a TDD or TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address, (2) the number of and proposed theme(s) of school(s) that will be served through the MSAP grant, and (3) information on the priority or priorities (if any) under which the applicant intends to apply. Applicants may access this form online at *http://innovation.ed.gov/what-we-do/parental-options/magnet-school-assistance-program-msap/.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference priorities that reviewers use to evaluate your application. You must limit the application narrative to no more than 150 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts*: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- Include page numbers at the bottom of each page in your narrative.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances, certifications, the desegregation plan and related information, and the forms used to respond to Competitive Preference Priorities 2 and 3; or the one-page abstract, the resumes, or letters of support. However, the page limit does apply to all of the application narrative in Part III.

Our reviewers will not read any pages of your application that exceed the page limit.

2.b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the MSAP program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: April 22, 2016.

Date of Informational Webinar: The MSAP intends to hold a Webinar to provide technical assistance to interested applicants. Detailed information regarding this Webinar will be provided on the MSAP Web site at *http://www2.ed.gov/programs/magnet/index.html.* A recording of this Webinar will be available on the Web site following the session.

Deadline for Transmittal of Applications: June 1, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 8, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 280.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under MSAP must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under MSAP, CFDA number 84.165A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions.

Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Magnet Schools Assistance Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.165, not 84.165A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for MSAP to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tiffany McClain, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W250, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.165A) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.165A) 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria are from 34 CFR 75.210, 34 CFR 280.30, 34 CFR 280.31, and section 5305 of the ESEA. All of the selection criteria are listed in this section and in the application package.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 125 points.

(a) *Desegregation (30 points).*

The Secretary reviews each application to determine the quality of the desegregation-related activities and determines the extent to which the applicant demonstrates—

(1) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools. (34 CFR 280.31)

(2) How it will foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities, extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate). (34 CFR 280.31)

(3) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, *e.g.,* women and girls in mathematics, science, or technology courses, and disabled students. (34 CFR 280.31)

(4) The effectiveness of all other desegregation strategies proposed by the applicant for the elimination, reduction, or prevention of minority group isolation in elementary schools and secondary schools with substantial proportions of minority students. (Section 5301(b)(1) of the ESEA)

(b) *Quality of Project Design (35 points).*

The Secretary reviews each application to determine the quality of the project design. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The manner and extent to which the magnet school program will improve student academic achievement for all students attending each magnet school program, including the manner and extent to which each magnet school program will increase student academic achievement in the instructional area or areas offered by the school. (Sections 5305(b)(1)(B) and 5305(b)(1)(D)(i) of the ESEA)

(2) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of

the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.*, State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence. (34 CFR 75.210)

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (34 CFR 75.210)

(4) The extent to which the proposed project is supported by strong theory (as defined in this notice). (34 CFR 75.210)

(c) *Quality of Management Plan (15 points) (34 CFR 75.210).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(2) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(d) *Quality of Personnel (10 points) (34 CFR 280.31).*

The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project. The Secretary determines the extent to which—

(1) The project director (if one is used) is qualified to manage the project;

(2) Other key personnel are qualified to manage the project; and

(3) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools.

To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(e) *Quality of Project Evaluation (10 points) (34 CFR 75.210).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) The Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* We have established the following six performance measures for the MSAP:

(a) The percentage of magnet schools receiving assistance whose student enrollment reduces, eliminates, or prevents minority group isolation.

(b) The percentage of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in reading/language arts.

(c) The percentage of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in mathematics.

(d) The cost per student in a magnet school receiving assistance.

(e) The percentage of magnet schools that received assistance that are still operating magnet school programs three years after Federal funding ends.

(f) The percentage of magnet schools that received assistance that meet the State's annual measurable objectives and, for high schools, graduation rate targets at least three years after Federal funding ends.

Note: Recognizing that States are no longer required to report annual measurable objectives to the Department under the ESEA, as amended by the ESSA, we include this performance measure in order to ensure grantees monitor and report high school graduation rates. States must establish and measure against ambitious, long-term goals; we encourage MSAP grantees to consider these State goals and incorporate them into their annual performance reporting as appropriate.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tiffany McClain, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W250, Washington, DC 20202–5970. Telephone: (202) 453–7200 or by email: *msap.team@ed.gov.*

If you use a TDD or TTY, call the FRS, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 19, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–09437 Filed 4–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0048]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ED School Climate Surveys (EDSCLS) Benchmark Study 2017 Update

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0048. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: ED School Climate Surveys (EDSCLS) Benchmark Study 2017 Update.

OMB Control Number: 1850–0923.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 328,877.

Total Estimated Number of Annual Burden Hours: 241,265.

Abstract: The ED School Climate Surveys (EDSCLS) are a suite of survey instruments being developed for schools, districts, and states by the U.S. Department of Education's (ED) National Center for Education Statistics (NCES). This national effort extends current activities that measure school climate, including the state-level efforts of the Safe and Supportive Schools (S3) grantees, which were awarded funds in

2010 by the ED's Office of Safe and Healthy Students (OSHS) to improve school climate. Through the EDSCLS, schools nationwide will have access to survey instruments and a survey platform that will allow for the collection and reporting of school climate data across stakeholders at the local level. The surveys can be used to produce school-, district-, and state-level scores on various indicators of school climate from the perspectives of students, teachers, noninstructional school staff and principals, and parents and guardians. The 2017 national EDSCLS benchmark study data collection from a nationally representative sample of schools across the United States to create a national comparison point for users of EDSCLS was last approved in April 2016 (OMB# 1850–0923 v.3). Data will be collected from a nationally representative sample of 500 schools serving students in grades 5–12 has to produce national school climate scores on the various topics covered by EDSCLS, which will be released in the updated EDSCLS platform and provide a basis for comparison between data collected by schools and school systems and the national school climate. This submission requests adjustments to the study plan to allow schools participating in the EDSCLS benchmark data collection the option to survey a sample rather than all students and staff so that participating schools have greater control over the amount of burden posed on EDSCLS respondents.

Dated: April 19, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–09348 Filed 4–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: U.S. Department of Education, President's Advisory Commission on Asian Americans and Pacific Islanders.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Advisory Commission on Asian Americans and Pacific Islanders (AAPI Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by § 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: The AAPI Commission meeting will be held on May 3, 2016 from 1:00–5:00 p.m. ET and May 4, 2016 from 9:00–12:00 a.m. ET at the U.S. Department of Education, 550 12th Street SW., 10th Floor, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jennifer Tran, White House Initiative on Asian Americans and Pacific Islanders, Potomac Center Plaza, 550 12th Street SW., Washington, DC 20202; telephone: 202–245–6747.

SUPPLEMENTARY INFORMATION: *The AAPI Commission's Statutory Authority and Function:* The President's Advisory Commission on Asian Americans and Pacific Islanders is established under Executive Order 13515, dated October 14, 2009 and subsequently continued and amended by Executive Order 13585 and extended on September 30, 2015 by Executive Order 13708. The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A. app.) which sets forth standards for the formation and use of advisory committees. According to Executive Order 13515, the Commission shall provide advice to the President, through the Secretary of Education and a senior official to be designated by the President, on: (i) The development, monitoring, and coordination of executive branch efforts to improve the quality of life of Asian Americans and Pacific Islanders (AAPIs) through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

Members of the public who would like to attend the meetings on May 3, 2016 and May 4, 2016, should R.S.V.P. to Jennifer Tran via email at *Jennifer.Tran@ed.gov* no later than April 25, 2016 at 3:00 p.m. ET.

Submission of Written Comments: Due to time constraints, there will not be a public comment period at these meetings. However, individuals wishing to provide comments regarding the meeting agenda or the Commission's work may send comments to Jennifer Tran via email at *Jennifer.Tran@ed.gov.* Please include in the subject line the wording, "Public Comment—Commission Meeting."

Meeting Agenda: The purpose of this meeting is to discuss current and future endeavors of the White House Initiative on Asian Americans and Pacific Islanders and key issues and concerns impacting the AAPI community; review the work of the White House Initiative on Asian Americans and Pacific Islanders; determine key strategies to help meet the Commission's charge as outlined in Executive Order 13515; and determine regional engagement strategies and deliverables around regional activities.

Access to Records of the Meeting: The Department will post the official report of the meeting on the AAPI Commission Web site not later than 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 550 12th Street SW., Washington, DC 20202 by emailing *Jennifer.Tran@ed.gov* or by calling (202) 245–6747 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. Individuals who will need accommodations for a disability in order to attend the meetings (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Jennifer Tran at 202–245–6747, no later than April 25, 2016. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order No. 13515, as amended by Executive Orders 13585 continued by Executive Order 13708.

Ted Mitchell,

Under Secretary, U.S. Department of Education.

[FR Doc. 2016–09181 Filed 4–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Appliance Standards and Rulemaking Federal Advisory Committee

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Appliance Standards and Rulemaking Federal Advisory Committee's (ASRAC) charter is being renewed.

The Committee will provide advice and recommendations to the Secretary of Energy on matters concerning the DOE's Appliances and Commercial Equipment Standards Program's (Program) test procedures and rulemaking process.

Additionally, the renewal of the ARSAC has been determined to be essential to conduct business of the Department of Energy's and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, Designated Federal Officer at (202) 287–1692.

Issued in Washington, DC, on April 15, 2016.

Amy Bodette,

Committee Management Officer.

[FR Doc. 2016–09388 Filed 4–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, and To Vacate Authorization During March 2016

	FE Docket Nos.
ENSTOR ENERGY SERVICES, LLC (formerly known) as IBERDROLA ENERGY SERVICES, LLC	14–104–NG
ENSTOR ENERGY SERVICES, LLC (formerly known) as IBERDROLA ENERGY SERVICES, LLC)	15–172–NG
WEST TEXAS GAS, INC	16–17–NG
GLOBAL PURE ENERGY, LLC	16–24–NG
ENERGIA DEL CARIBE, S.A	16–23–NG
ALCOA INC.	16–27–NG
CAMERON LNG, LLC	15–67–LNG
IRVING OIL COMMERCIAL GP	16–21–NG
IRVING OIL TERMINALS OPERATIONS INC	16–20–NG
NJR ENERGY SERVICES COMPANY	16–30–NG
SHELL ENERGY NORTH AMERICA (US), L.P	16–32–NG
PROMETHEUS ENERGY GROUP, INC	16–31–LNG
IBERDROLA CANADA ENERGY	16–19–NG
BG LNG SERVICES, LLC	16–01–LNG
ENSTOR ENERGY SERVICES, LLC	16–36–NG
ENSTOR ENERGY SERVICES, LLC	16–37–NG
NATIONAL FUEL RESOURCES, INC	16–35–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and to vacate authority. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 14, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT A

3489–A	03/23/16	14–104–NG	Enstor Energy Services, LLC (formerly known as Iberdrola Energy Services, LLC).	Order vacating blanket authority to import/export natural gas from/to Mexico.
3745–A	03/23/16	15–172–NG	Enstor Energy Services, LLC (formerly known as Iberdrola Energy Services, LLC).	Order vacating blanket authority to import/export natural gas from/to Canada.
3793	03/15/16	16–17–NG	West Texas Gas, Inc	Order granting blanket authority to export natural gas to Mexico.
3794	03/15/16	16–24–NG	Global Pure Energy, LLC	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT A—Continued

3795	03/15/16	16–23–NG	Energia del Caribe, S.A	Order granting blanket authority to export natural gas to Mexico.
3796	03/15/16	16–27–NG	Alcoa Inc	Order granting blanket authority to import natural gas from Canada.
3797	03/18/16	15–67–LNG	Cameron LNG, LLC	Final Opinion and Order granting Long-term Multi-contract authority to export LNG by vessel from the Cameron Parish Terminal located in Cameron and Calcasieu Parishes, Louisiana, to Non-free Trade Agreement Nations.
3798	03/17/16	16–21–NG	Irving Oil Commercial GP	Order granting blanket authority to export natural gas to Canada.
3799	03/17/16	16–20–NG	Irving Oil Terminals Operations Inc	Order granting blanket authority to import natural gas from Canada.
3800	03/17/16	16–30–NG	NJR Energy Services Company	Order granting blanket authority to import/export natural gas from/to Canada.
3801	03/17/16	16–32–NG	Shell Energy North America (US), L.P.	Order granting blanket authority to export LNG to Canada/Mexico by vessel/truck, and to import LNG from various international sources by vessel.
3802	03/17/16	16–31–LNG	Prometheus Energy Group, Inc	Order granting blanket authority to import/export LNG to Canada/Mexico by truck.
3804	03/18/16	16–19–NG	Iberdrola Canada Energy Services, Ltd.	Order granting blanket authority to import/export natural gas from/to Canada.
3805	03/18/16	16–01–LNG	BG LNG Services, LLC	Order granting blanket authority to import LNG from various international sources by vessel.
3806	03/21/16	16–36–NG	Enstor Energy Services, LLC	Order granting blanket authority to import/export natural gas from/to Canada.
3807	03/21/16	16–37–NG	Enstor Energy Services, LLC	Order granting blanket authority to import/export natural gas from/to Mexico.
3808	03/29/16	16–35–NG	National Fuel Resources, Inc	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.

[FR Doc. 2016–09387 Filed 4–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–103–000.
Applicants: Copper Mountain Solar 4, LLC, Mesquite Solar 2, LLC, Mesquite Solar 3, LLC.
Description: Application for Authorization of Transaction Pursuant to FPA Section 203 of Copper Mountain Solar 4, LLC, et al.
Filed Date: 4/15/16.
Accession Number: 20160415–5300.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: EC16–104–000.
Applicants: Maine GenLead, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Expedited Action, Shortened Comment Period, and Confidential Treatment of Maine GenLead, LLC.
Filed Date: 4/15/16.
Accession Number: 20160415–5319.
Comments Due: 5 p.m. ET 5/6/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–266–004.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 2016–4–18_PSCoLossesStlmtCompFiling to be effective 1/1/2014.
Filed Date: 4/18/16.
Accession Number: 20160418–5096.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1038–001.
Applicants: Entergy Louisiana, LLC.
Description: Tariff Amendment: ELL–SRMPA 8th Extension of Interim Agreement to be effective 3/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5293.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1077–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Amended Filing in ER16–1077—Southwestern Amendatory Agreement Third Extension to be effective 3/1/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5114.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1303–001.
Applicants: Entergy Louisiana, LLC.
Description: Tariff Amendment: ELL–SRMPA 9th Extension of Interim Agreement to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5294.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1438–000.
Applicants: 63SU 8ME LLC.
Description: § 205(d) Rate Filing: LGIA CTA Concurrence Normal to be effective 6/7/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5268.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1439–000.
Applicants: 63SU 8ME LLC.
Description: § 205(d) Rate Filing: SFA Concurrence Normal to be effective 6/7/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5271.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1440–000.
Applicants: Roswell Solar, LLC.
Description: Baseline eTariff Filing: Roswell Solar, LLC's Application for Market-based Rates to be effective 6/15/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5273.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1441–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Cancellation: 20160415_Clarity_Cancellation to be effective 12/31/9998.
Filed Date: 4/15/16.
Accession Number: 20160415–5295.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1442–000.
Applicants: Northern States Power Company, a Wisconsin corporation.
Description: Tariff Cancellation: 20160415_Clarity Cancellation to be effective 4/15/2016.

Filed Date: 4/15/16.
Accession Number: 20160415–5296.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1443–000.
Applicants: NRG Power Midwest LP.
Description: § 205(d) Rate Filing: Revised Rate Schedule and Request for Waiver to be effective 4/16/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5000.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1444–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of In-Service Construction Service Agreements to be effective 1/14/2011.
Filed Date: 4/18/16.
Accession Number: 20160418–5112.
Comments Due: 5 p.m. ET 5/9/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09351 Filed 4–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3279–004.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–04–18_Schedule 37 Compliance Filing to be effective 6/1/2011.
Filed Date: 4/18/16.
Accession Number: 20160418–5150.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER15–1248–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Formal Challenge, et. al. of Consumers Energy Company to March 13, 2015 Annual Informational Attachment O filing, as supplemented on March 27, 2016 of Michigan Electric Transmission Company, LLC.
Filed Date: 4/15/16.
Accession Number: 20160415–5344.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–833–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–04–18_PRA Compliance Filing to be effective 1/30/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5201.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1169–000.
Applicants: Ameren Illinois Company.
Description: Motion to Intervene and Formal Challenge of the Southwestern Electric Cooperative, Inc. and Southern Illinois Power Cooperative, Inc.
Filed Date: 4/15/16.
Accession Number: 20160415–5328.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1188–000.
Applicants: Consumers Energy Company.
Description: Formal Challenge of Michigan Electric Transmission Company, LLC to March 15, 2016 inputs into Formula Rate of Consumers Energy Company.
Filed Date: 4/15/16.
Accession Number: 20160415–5332.
Comments Due: 5 p.m. ET 5/6/16.

Docket Numbers: ER16–1445–000.
Applicants: Dynegy Midwest Generation, LLC.
Description: § 205(d) Rate Filing: Revised Rate Schedule and Request for Expedited Treatment to be effective 6/1/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5134.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1446–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2888R1 Arkansas Electric Cooperative Corp NITSA NOA to be effective 4/1/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5137.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1447–000.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: PSCo-Stlmnt Losses Comp to be effective 4/16/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5184.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1448–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Service Agreement No. 881 and 882 to be effective 4/22/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5203.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1449–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 2934, Queue No. W2–080 per Assignment to SNNJ1 to be effective 10/5/2014.
Filed Date: 4/18/16.
Accession Number: 20160418–5210.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1450–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–04–18_SA 2838 METC–AEP IA Certificate of Concurrence to be effective 3/25/2016.
Filed Date: 4/18/16.
Accession Number: 20160418–5228.
Comments Due: 5 p.m. ET 5/9/16.

Docket Numbers: ER16–1451–000.
Applicants: Powerex Corp.
Description: Notice of Cancellation of First Revised Rate Schedule FERC No. 2 of Powerex Corp.
Filed Date: 4/18/16.
Accession Number: 20160418–5255.
Comments Due: 5 p.m. ET 5/9/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09349 Filed 4–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–26–001.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123(b), (e), (g): EOIT Revised Petition for Rate Approval to be effective 4/1/2016; Filing Type: 1270.
Filed Date: 4/7/2016.
Accession Number: 201604075238.
Comments Due: 5 p.m. ET 4/28/16.
284.123(g) Protests Due: 5 p.m. ET 4/28/16.

Docket Number: PR16–45–000.
Applicants: Black Hills Energy Arkansas, Inc.
Description: Tariff filing per 284.123(e) + (g): Revised Statement of Operating Conditions to be effective 4/14/2016; Filing Type: 1280.
Filed Date: 4/13/2016.
Accession Number: 201604135170.
Comments Due: 5 p.m. ET 5/4/16.
284.123(g) Protests Due: 5 p.m. ET 6/13/16.

Docket Number: PR16–46–000.
Applicants: Public Service Company of Colorado.
Description: Tariff filing per 284.123(b)(1), (g): Re-baseline to be effective 4/16/2016; Filing Type: 1330.
Filed Date: 4/15/2016.
Accession Number: 201604155141.
Comments Due: 5 p.m. ET 5/6/16.
284.123(g) Protests Due: 5 p.m. ET 6/14/16.

Docket Numbers: RP16–841–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: DPEs—PSEG, UGI, and Clean-Up to be effective 5/15/2016.
Filed Date: 4/14/16.
Accession Number: 20160414–5062.
Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–842–000.
Applicants: Discovery Gas Transmission LLC.
Description: Imbalance Cash-out Report for 2015 Activity for Discovery Gas Transmission LLC.
Filed Date: 4/14/16.
Accession Number: 20160414–5067.
Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–843–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) Rate Filing: Egan 2016 Cleanup Filing to be effective 5/16/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5042.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–844–000.
Applicants: WestGas InterState, Inc.
Description: Compliance filing Re-baseline to be effective 4/16/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5056.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–845–000.
Applicants: Questar Pipeline Company.
Description: Compliance filing Order 587–W Compliance Filing, Revised Sec. No. 26 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5072.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–846–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Compliance filing Order 587–W Compliance Filing, Revised Sec. 27 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5082.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–847–000.
Applicants: WestGas InterState, Inc.
Description: Tariff Cancellation: 20160415_WGI Cancellation to be effective 4/15/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5095.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–848–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Compliance filing Order 587–W Compliance Filing, Revised Sec. No. 28 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5098.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–849–000.
Applicants: White River Hub, LLC.
Description: Compliance filing Order 587–W Compliance Filing, Revised Sec. No. 26 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5140.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–850–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: § 4(d) Rate Filing: Request for Extension of Time to Comply with NAESB Standard to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5165.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–851–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing 4–15–16 to be effective 4/15/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5186.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–852–000.
Applicants: Rockies Express Pipeline LLC.
Description: Compliance filing Seneca Incremental Facilities Compliance to be effective 6/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5243.
Comments Due: 5 p.m. ET 4/27/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–409–001.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Compliance filing Compliance with RP16–409 NAESB Order to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5031.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–410–001.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing Compliance with RP16–410 NAESB Order to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5032.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–427–001.
Applicants: Garden Banks Gas Pipeline, LLC.
Description: Compliance filing Garden Banks Compliance Refile NAESB 3.0 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5136.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–428–001.
Applicants: Mississippi Canyon Gas Pipeline, L.L.C.
Description: Compliance filing Mississippi Canyon Compliance Refile NAESB 3,0 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5147.
Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–429–001.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: Compliance filing Nautilus Compliance Refile for NAESB 3.0 to be effective 4/1/2016.
Filed Date: 4/15/16.
Accession Number: 20160415–5145.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–432–001.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Compliance filing Cameron Interstate Pipeline Filing in Compliance with March 29, 2016 FERC Order to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5103.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–433–001.

Applicants: LA Storage, LLC.

Description: Compliance filing LA Storage Revised Tariff Filing in Compliance with March 29, 2016 FERC Order to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5107.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–434–001.

Applicants: Mississippi Hub, LLC.

Description: Compliance filing Mississippi Hub Tariff Filing in Compliance with March 29, 2016 FERC Order to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5111.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–435–001.

Applicants: Southwest Gas Storage Company.

Description: Compliance filing Compliance with RP16–435 NAESB Order to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5033.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–469–001.

Applicants: Lake Charles LNG Company, LLC.

Description: Compliance filing Compliance with RP16–469 NAESB Order to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5034.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–495–001.

Applicants: American Midstream (AlaTenn), LLC.

Description: Compliance filing Compliance with Order No. 587–W to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5001.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–496–001.

Applicants: American Midstream (Midla), LLC.

Description: Compliance filing Compliance with Order No. 587–W to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5002.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–501–001.

Applicants: High Point Gas Transmission, LLC.

Description: Compliance filing Compliance with Order No. 587–W to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5217.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–503–001.

Applicants: Kern River Gas Transmission Company.

Description: Compliance filing 2016 NAESB 3.0 Compliance to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5142.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–516–001.

Applicants: Empire Pipeline, Inc.

Description: Compliance filing Empire NAESB v3 CF (RP16–516) to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5161.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–519–001.

Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing NFGSC CF for Order 587–W (RP16–519) to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5061.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–539–001.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing AGT RP16–539–000 Compliance Filing to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5002.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–540–001.

Applicants: Southern LNG Company, L.L.C.

Description: Compliance filing Order No. 587–W Compliance Filing Compliance to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5079.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–542–001.

Applicants: Elba Express Company, L.L.C.

Description: Compliance filing Order No. 587–W Compliance Filing Compliance to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5080.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–544–001.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing Order No. 587–W Compliance Filing Compliance to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5076.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–561–001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Compliance filing Compliance Filing 2 Pursuant to Order No. 587–W to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5187.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–562–001.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Compliance filing Gulfstream RP562–000 Compliance Fiiling to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5000.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–572–001.

Applicants: Sabine Pipe Line LLC.

Description: Compliance filing Sabine Pipeline Order 587–W compliance filing to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5175.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–573–001.

Applicants: Chandeleur Pipe Line, LLC.

Description: Compliance filing Chandeluer Pipeline Order 587–W compliance 4–14–16 to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5177.

Comments Due: 5 p.m. ET 4/26/16.

Docket Numbers: RP16–574–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Compliance filing 04/15/16 FERC Orders 587–W and 809 Compliance Conditions Filing to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5201.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–576–002.

Applicants: Cimarron River Pipeline, LLC.

Description: Compliance filing NAESB 3.0—Compliance Obligation Filing to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5185.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–579–002.

Applicants: Dauphin Island Gathering Partners.

Description: Compliance filing NAESB 3.0 Compliance Obligations Filing to be effective 4/1/2016.

Filed Date: 4/15/16.

Accession Number: 20160415–5184.

Comments Due: 5 p.m. ET 4/27/16.

Docket Numbers: RP16–805–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Tariff Amendment: Amendment to Filing (4–14–2016) to be effective 4/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5166.

Comments Due: 5 p.m. ET 4/26/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09394 Filed 4–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2458–214]

Great Lakes Hydro America, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to Amend Project Boundary.

b. *Project No:* 2458–214.

c. *Date Filed:* December 16, 2015.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Penobscot Hydroelectric Project.

f. *Location:* The project is located on the Penobscot River in Piscataquis and Penobscot counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kevin Bernier, Senior Compliance Specialist; *Kevin.Bernier@brookfieldrenewable.com*; (207) 723–4341.

i. *FERC Contact:* Krista Sakallaris, (202) 502–6302, *Krista.Sakallaris@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 18, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2458–214.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Great Lakes Hydro America, LLC proposes to amend the project boundary for the Penobscot Hydroelectric Project to remove a 2.5 acre island. The island includes a historic structure listed in the National Register of Historic Places. The licensee is proposing to transfer the island, including the historic structure, to the West Branch Historical Preservation Committee, a Maine not-for-profit organization formed for the purpose of owning, operating, and maintaining historic structures. The amendment application includes provisions to ensure protection of the historic property once removed from the Commissions jurisdiction, which were drafted in consultation with the Maine Historic Preservation Commission.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 18, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09350 Filed 4–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1371–000]

63SU 8ME LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 63SU 8ME LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 4, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–09395 Filed 4–21–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9945–51–Region 5]

Notification of a Public Teleconference of the Science and Information Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public teleconference of the Science and Information Subcommittee (SIS) to the Great Lakes Advisory Board (Board). The purpose of this meeting is to discuss the Great Lakes Restoration Initiative (GLRI) covering FY15–19 and other relevant matters.

DATES: The teleconference will be held on Wednesday, May 11, 2016 from 10:00 a.m. to 12:00 p.m. Central Time, 11:00 a.m. to 1:00 p.m. Eastern Time. An opportunity will be provided to the public to comment.

ADDRESSES: The public teleconference will be held by teleconference only. The teleconference number is: 1–877–226–9607; participant code: 605 016 6037.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this teleconference may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *cestaric.rita@epa.gov.* General information on the GLRI, the Board and SIS can be found at *http://glri.us/public.html.*

SUPPLEMENTARY INFORMATION:

Background: The SIS was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463. The SIS is composed of members from governmental, private sector, non-profit and academic organizations, appointed by the EPA Administrator in her capacity as Chair of the Interagency Task Force (IATF), who were selected based on their established records of distinguished service in their professional community and their knowledge of ecological protection and restoration issues. The SIS will assist the Board in providing ongoing advice on Great Lakes adaptive management and may provide other recommendations, as requested by the IATF.

Availability of Meeting Materials: The agenda and other materials in support of the meeting will be available at *http://glri.us/advisory/index.html.*

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the SIS. Input from the public to the SIS will have the most impact if it provides specific information for the SIS to consider. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by May 9, 2016 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements must be received by May 5, 2016 so that the information may be made available to the SIS for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 4, 2016.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2016–09452 Filed 4–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9026–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 04/11/2016 Through 04/15/2016
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20160080, Draft, BOEM, LA, Gulf of Mexico OCS Oil and Gas Lease Sales: 2017–2022, Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261, Comment Period Ends: 06/06/2016, Contact: Gary Goeke 504–736–3233.

EIS No. 20160081, Final, USFS, CA, Elk Late-Successional Reserve Enhancement Project, Review Period Ends: 06/06/2016, Contact: Cindy Diaz 530–926–4511.

Amended Notices

EIS No. 20160055, Draft, USFS, MT, Lookout Pass Ski Area Expansion, Comment Period Ends: 05/10/2016, Contact: Kerry Arneson 208–769–3021, Revision to FR Notice Published 03/11/2016; Extending Comment Period from 04/25/2016 to 05/10/2016.

Dated: April 19, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–09409 Filed 4–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: Agape Educational Media, Inc., Station WOWB, Facility ID 40428, BPED–20160329AER, From Brewton, AL, To Pace, FL; Chehalis Valley Educational Foundation, Station KACS, Facility ID 10685, BPED–20160314AAD, From Chehalis, WA, To Rainier, WA; Maria Elena Juarez, Station KRXR, Facility ID 2805, BP–20160217ABQ, From Gooding, ID, To Kuna, ID; Minerva R. Lopez, Station KOUL, Facility ID 28074, BPH–20160216ABP, From Benavides, TX, To Driscoll, TX; Radiojones, LLC, Station WXRS–FM, Facility ID 36212, BPH–20160315AAI, From Portal, GA, To Brooklet, GA Radiojones, LLC, Station WBMZ, Facility ID 73247, BPH–20160315AAU, From Metter, GA, To Portal, GA; RJ Broadcasting Ls, LLC, Station KIDJ, Facility ID 12665, BPH–20160229AAZ, From Rexburg, ID, To Sugar City, ID.

DATES: The agency must receive comments on or before June 21, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2016–09371 Filed 4–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10281, Independent National Bank, Ocala, FL

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Independent National Bank, Ocala, FL ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Independent National Bank on August 20, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: April 19, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–09405 Filed 4–21–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Triumph Bancorp, Inc., Triumph Consolidated Cos., LLC, and Peak Acquisition Corporation, all in Dallas, Texas;* to acquire 100 percent of the

voting shares of ColoEast Bankshares, Inc., and thereby indirectly acquire Colorado East Bank & Trust, both in Lamar, Colorado.

Board of Governors of the Federal Reserve System, April 19, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–09377 Filed 4–21–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 9, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Thomas G. Kenney, individually and acting in concert with Jason T. Kenney, both of Fennimore, Wisconsin, Kevin M. Kenney, Cibolo, Texas, and Kelley L. Adam, Fennimore, Wisconsin;* to acquire voting shares of Boscobel Bancorp, Inc., Boscobel, Wisconsin, and thereby indirectly acquire voting shares of Community First Bank, Boscobel, Wisconsin, and Livingston State Bank, Livingston, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Tyler B. Erickson, Bozeman, Montana,* the Personal Representative of the Estate of Bruce A. Erickson; to retain voting shares of Guaranty Development Company, Livingston, Montana, and thereby indirectly retain voting shares of American Bank, Bozeman, Montana.

Board of Governors of the Federal Reserve System, April 19, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–09376 Filed 4–21–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2016–02; Docket No. 2016–0002, Sequence No. 11]

Federal Travel Regulation (FTR); Relocation Allowances—Relocation Income Tax (RIT) Allowance Tables

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The purpose of this notice is to inform agencies that FTR Bulletin 16–03 pertaining to Relocation Allowances—Relocation Income Tax (RIT) Allowance Tables is now available online at *www.gsa.gov/ftrbulletin.*

DATES: *Effective:* April 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Office of Asset and Transportation Management (MAE), Office of Government-wide Policy, GSA, at 202–501–3822 or via email at *rodney.miller@gsa.gov.* Please cite FTR Bulletin 16–03.

SUPPLEMENTARY INFORMATION: GSA published FTR Amendment 2008–04 in the **Federal Register** at 73 FR 35952 on June 25, 2008, specifying that GSA would no longer publish the RIT Allowance tables in Title 41 of the Code of Federal Regulation Part 302–17, Appendices A through D (FTR prior to January 1, 2015—*www.gsa.gov/federaltravelregulaton*—FTR and Related Files); instead, the tables would be available on a GSA Web site. FTR Bulletin 16–03: Relocation Allowances—Relocation Income Tax (RIT) Allowance Tables is now available and provides the annual changes to the RIT allowance tables necessary for calculating the amount of a transferee's increased tax burden due to his or her official permanent change of station. GSA published Federal Travel Regulation (FTR) Amendment 2014–01 in the **Federal Register** at 79 FR 49640, on August 21, 2014, which eliminated the need for the Government-unique tax tables for relocations that began on January 1, 2015 and later. However, for relocations that began earlier than January 1, 2015, this bulletin is required to compute the employee's reimbursement for additional income taxes associated with the relocation. For relocations after January 1, 2015, transferees and agencies must use the tables published by the U.S. Internal Revenue Service (IRS), state, and local tax authorities, and follow the procedures in the FTR, Part 302–17. FTR Bulletin 16–03 and all other FTR Bulletins can be found at *www.gsa.gov/ftrbulletin.*

Dated: April 11, 2016.

Troy Cribb,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2016–09423 Filed 4–21–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0980]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Environmental Assessment Reporting System (NEARS), formerly the National Voluntary Environmental Assessment Information System (NVEAIS)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since 2014, environmental factor data associated with foodborne outbreaks have been reported to the National Voluntary Environmental Assessment Information System (NVEAIS; OMB Control No. 0920–0980; expiration date 08/31/2016). CDC is requesting a three-year Office of Management and Budget (OMB) revision for NVEAIS, hereafter referred to as the National Environmental Assessment Reporting System (NEARS). In 2015, it was recommended that NVEAIS be renamed as NEARS. This name change will be an enhancement of the current surveillance system and was recommended by CDC leadership, and other food safety partners who desired to simplify and improve the name.

The goal of NEARS remains to collect data on foodborne illness outbreaks and environmental assessments routinely conducted by local, state, federal, territorial, or tribal food safety programs during outbreak investigations. The data reported through this surveillance system provides timely data on the causes of outbreaks, including environmental factors associated with outbreaks, which are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks.

NEARS was developed by the Environmental Health Specialists Network (EHS–Net), a collaborative network of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and local, state, territorial, and tribal food safety programs. NEARS is designed to link to CDC's National Outbreak Reporting System (NORS, under the National Disease Surveillance Program II—Disease Summaries; OMB Control No. 0920–0004; expiration date 10/31/2017), a disease outbreak surveillance system for enteric diseases transmitted by food.

When linked, NEARS and NORS data provide opportunities to strengthen the robustness of outbreak data reported to CDC. The foodborne outbreak environmental assessment data reported to NEARS will be used to characterize data on food vehicles and monitor trends; identify contributing factors and their environmental antecedents; generate hypotheses, guide planning, and implementation; evaluate food safety programs, and ultimately assist to prevent future outbreaks. Collectively, these data play a vital role in improving the food safety system, strengthening the robustness of outbreak data reported to CDC.

The first type of NEARS respondent is food safety program officials. Although not a requirement, food safety program personnel participating in NEARS will be encouraged to take two trainings: NEARS food safety program personnel training and NEARS e-learning. The former will train food safety personnel on identifying environmental factors, logging in and entering data into the web-based NEARS data entry system, and troubleshooting problems. The latter is an e-Learning course on how to use a systems approach in foodborne illness outbreak environmental assessments. It is suggested that respondents take this training one time, for a total of 10 hours.

Next, for each outbreak, one official from each participating program will spend a little over an hour to make establishment observations, 30 minutes to record environmental assessment data, and 40 minutes for data entry for both NEARS's surveys into the web-based system. Officials will not report on their programs or personnel.

Food safety programs are typically located in public health or agriculture agencies. There are approximately 3,000 such agencies in the United States. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, based on existing data, we estimate a maximum of 1,400 foodborne illness outbreaks will occur annually. Only programs in the jurisdictions in which these outbreaks occur would voluntarily report to NEARS. Thus, not every program will respond every year. We assume each outbreak will occur in a different jurisdiction.

The second type of NEARS respondents are managers of retail establishments. The manager interview will be conducted at each establishment associated with an outbreak. Most outbreaks are associated with only one establishment. We estimate that a maximum average of four managers at each establishment will be interviewed per outbreak. Each interview will take about 20 minutes.

The total estimated annual burden is 20,300 hours, an increase of 14,233 hours over the previously approved 6,067 burden hours. This increase in requested burden hours is due to the addition of the NEARS e-learning training opportunity.

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Food safety program personnel	NEARS Food Safety Program Training	1,400	1	2
	NEARS e-Learning (screen shots)	1,400	1	10
	NEARS Data Recording (paper form)	1,400	1	30/60
	NEARS Data Recording and Manager Interview Web Entry.	1,400	1	40/60
Retail food personnel	NEARS Manager Interview	5,600	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–09398 Filed 4–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10600]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 23, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluation of the Medicare Patient Intravenous Immunoglobulin Demonstration; *Use:* Primary Immune Deficiency Diseases (PIDD) are caused by genetic defects that result in a lack of and/or impaired antibody function. Without antibodies, the body's immune system is not able to function effectively. Immunoglobulin (IG) therapy is used to temporarily replace some of the antibodies (immunoglobulins) that are missing or not working properly in people with PIDD.

By special statutory provision, Medicare Part B covers intravenous immunoglobulin (IVIG) for persons with PIDD who wish to receive the drug in-home, but does not allow for Medicare to cover any of the items and services needed to administer the drug unless the person is homebound or otherwise receiving services under a Medicare home health episode of care. Therefore, most beneficiaries with PIDD receive treatment at hospital outpatient departments, physicians' offices, and other outpatient settings. A current alternative to IVIG is subcutaneous immunoglobulin (SCIG), a product that permits some beneficiaries to self-administer the immunoglobulin (IG) safely at home without an attending healthcare professional. SCIG at home is reimbursed by Medicare. However, there are limitations to SCIG—*e.g.,* the need for more frequent administration and higher volumes of solution, which can reach a maximum absorbable level for some patients that is below their optimum IG treatment level—that inhibit more widespread use of SCIG.

Under the Medicare Patient IVIG Access Demonstration project, by paying for the items and services needed to administer the IVIG drug in-home, Medicare will enable beneficiaries and their physicians to have greater flexibility in choosing the option that is most appropriate for the beneficiary. With the exception of coverage of these items and services, no other aspects of Medicare coverage for IVIG (*e.g.,* drugs approved for coverage or PIDD diagnoses covered) will change under the demonstration.

The Medicare Patient IVIG Access Demonstration project mandates CMS to:

- Evaluate the impact of the Medicare IVIG Access Demonstration project on Medicare beneficiary access to IVIG at home,
- Determine the appropriateness of implementing a new payment methodology for IVIG in all settings and determining an appropriate payment amount, and
- Update the existing 2007 Office of the Assistant Secretary for Planning and Evaluation (ASPE) report *Analysis of Supply, Distribution, Demand, and Access Issues Associated with Immune Globulin Intravenous (IGIV)* (2007 ASPE Report).

The impact evaluation seeks to understand the experiences of demonstration participants and non-participants, to update the 2007 ASPE report, and to support the payment methodology through the use of qualitative and quantitative data collection. The qualitative data collection will consist of a series of stakeholder interviews. Interviews with IVIG/SCIG physicians and nurses will provide information on the experiences of beneficiaries from the perspective of those who have significant, in-depth and practical hands-on experience with delivering IG to Medicare beneficiaries with and without access to home infusions. We will be able to gather their knowledge of beneficiaries' experiences with the care, as well as information on any potential health consequences due to changes in IG medication or participation in the Demonstration. Lastly, we will gather the physicians and nurses' views of the degree to which beneficiaries believe the program is effective, including the cost effectiveness for beneficiaries who use the services provided under the Demonstration. *Form Number:* CMS–10600 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Individuals and Households; State, Local or Tribal Governments; Private Sector (Business or other for-profit); *Number of Respondents:* 2,488; *Total Annual Responses:* 2,488; *Total Annual Hours:* 483. (For policy questions regarding this collection contact Pauline Karikari-Martin at 410–786–1040).

Dated: April 19, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–09415 Filed 4–21–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1490S and CMS–10458]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 21, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ________, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–1490S Patient's Request for Medicare Payment

CMS–10458 Consumer Research Supporting Outreach for Health Insurance Marketplace

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Patient's Request for Medicare Payment; *Use:* The Form CMS–1490S form provides beneficiaries with a relatively easy form to use when filing their claims. Without the collection of this information, claims for reimbursement relating to the provision of Part B medical services/supplies could not be acted upon. This would result in a nationwide paralysis of the operation of the Federal Government's Part B Medicare program, and major problems for the patients/beneficiaries inflicting severe physical and financial hardship on beneficiaries. This form was explicitly developed for easy use by beneficiaries who file their own claims. The CMS–1490S form can be obtained from any Social Security office or Medicare Administrative Contractors or CMS. When the CMS–1490S is used, the beneficiary must attach to it his/her bills from physicians or suppliers. The form is, therefore, designed specifically to aid beneficiaries who cannot get assistance from their physicians or suppliers for completing claim forms. The form is currently approved under 0938–1197; however, we are submitting for approval as a standalone information collection request. Once a new OMB control number is issued, we will remove the burden for the CMS–1490S that is currently approved under OMB control number 0938–1197. *Form Number:* CMS–1490 (OMB control number: 0938–NEW); *Frequency:* Occasionally *Affected Public:* Individuals and Households; *Number of Respondents:* 167,839; *Total Annual Responses:* 167,839; *Total Annual Hours:* 83,920. (For policy questions regarding this collection contact Sumita Sen at 410–786–5755.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Consumer Research Supporting Outreach for Health Insurance Marketplace; *Use:* The Centers for Medicare and Medicaid Services is requesting reapproval for two surveys that aid in understanding levels of awareness and customer service needs associated with the Health Insurance Marketplace established by the Affordable Care Act. Because the Marketplace will provide coverage to the almost 50 million uninsured in the United States through individual and small employer programs, we have developed one survey to be administered to individual consumers most likely to use the Marketplace and another to be administered to small employers most likely to use the Small Business Health Options portion of the Marketplace. These brief surveys, designed to be conducted quarterly, give CMS the ability to obtain a rough indication of the types of outreach and marketing that will be needed to enhance awareness of and knowledge about the Marketplace for individual and business customers. CMS' biggest customer service need is likely to be providing sufficient education so consumers: (a) Can take advantage of the Marketplace and (b) know how to access CMS' customer service channels. The surveys will provide information on media use, concept awareness, and conceptual or content areas where education for customer service delivery can be improved. Awareness and knowledge gaps are likely to change over time based not only on effectiveness of CMS' marketing efforts, but also of those of state, local, private sector, and nongovernmental organizations. *Form Number:* CMS–10458 (OMB control number: 0938–1203): *Frequency:* Quarterly; *Affected Public:* Individuals or households, Private Sector (business or other for-profits); *Number of Respondents:* 40,200; *Total Annual Responses:* 40,200; *Total Annual Hours:* 2,480. (For policy questions regarding this collection contact Frank Funderburk at 410–786–1820.)

Dated: April 19, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–09425 Filed 4–21–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3330–N]

Announcement of the Re-Approval of the American Society of Histocompatibility and Immunogenetics (ASHI) as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the application of the American Society for Histocompatibility and Immunogenetics (ASHI) for approval as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program for the following specialty and subspecialty areas: General Immunology; Histocompatibility; and ABO/Rh typing. We have determined that the ASHI accreditation meets or exceeds the applicable CLIA requirements. We are announcing the approval and grant ASHI deeming authority for a period of 6 years.

DATES: *Effective Date:* This notice is effective from April 22, 2016 to April 21, 2022.

FOR FURTHER INFORMATION CONTACT: Penelope Meyers, (410) 786–3366.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). CLIA amended section 353 of the Public Health Service Act. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under those provisions, we may grant deeming authority to an accreditation organization if its requirements for laboratories accredited under its program are equal to or more stringent than the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Subpart E of part 493 (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specifies the requirements an accreditation organization must meet to be approved by us as an accreditation organization under CLIA.

II. Notice of Approval of ASHI as an Accreditation Organization

In this notice, we approve ASHI as an organization that may accredit laboratories for purposes of establishing its compliance with CLIA requirements for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. We have examined the initial ASHI application and all subsequent submissions to determine its accreditation program's equivalency with the requirements for approval of an accreditation organization under subpart E of part 493. We have determined that ASHI meets or exceeds the applicable CLIA requirements. We have also determined that ASHI will ensure that its accredited laboratories will meet or exceed the applicable requirements in subparts H, I, J, K, M, Q, and the applicable sections of R. Therefore, we grant ASHI approval as an accreditation organization under subpart E of part 493, for the period stated in the DATES section of this notice for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. As a result of this determination, any laboratory that is accredited by ASHI during the time period stated in the DATES section of this notice will be deemed to meet the CLIA requirements for the listed subspecialties and specialties, and therefore, will generally not be subject to routine inspections by a state survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or its agent(s).

III. Evaluation of ASHI Commission Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that ASHI accreditation program meets the necessary requirements to be approved by us and that, as such, we may approve ASHI as an accreditation program with deeming authority under the CLIA program. ASHI formally applied to us for approval as an accreditation organization under CLIA for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing. In reviewing these materials, we reached the following determinations for each applicable part of the CLIA regulations:

A. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

ASHI submitted its mechanism for monitoring compliance with all requirements equivalent to condition-level requirements, a list of all its current laboratories and the expiration date of their accreditation, and a detailed comparison of the individual accreditation requirements with the comparable condition-level requirements. The ASHI policies and procedures for oversight of laboratories performing laboratory testing for the subspecialty of General Immunology, the specialty of Histocompatibility, and the subspecialty of ABO/Rh typing are equivalent to those of CLIA in the matters of inspection, monitoring proficiency testing (PT) performance, investigating complaints, and making PT information available. ASHI's requirements for monitoring and inspecting laboratories are the same as those previously approved by us for laboratories in the areas of accreditation organization, data management, the inspection process, procedures for removal or withdrawal of accreditation, notification requirements, and accreditation organization resources. The requirements of the accreditation programs submitted for approval are equal to the requirements of the CLIA regulations.

B. Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

ASHI's requirements are equal to or more stringent than the CLIA requirements at § 493.801 through § 493.865.

For the specialty of Histocompatibility, ASHI requires participation in at least one external PT program, if available, in histocompatibility testing with an 80 percent score required for successful participation and enhanced PT for laboratories that fail an event. The CLIA regulations do not contain a requirement for external PT for the specialty of Histocompatibility. For the subspecialty of General Immunology, and the subspecialty of ABO/Rh typing, ASHI's requirements are equal to the CLIA requirements.

C. Subpart J—Facility Administration for Nonwaived Testing

ASHI's requirements for the submitted subspecialties and specialties are equal to the CLIA requirements at § 493.1100 through § 493.1105.

D. Subpart K—Quality System for Nonwaived Testing

The ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at § 493.1200 through § 493.1299. For instance, ASHI's control procedure requirements for the test procedures Nucleic Acid Testing and Flow Cytometry are more specific and detailed than the CLIA language for requirements for control procedures. Section 493.1256 paragraphs (c)(1) and (c)(2) require control materials that will detect immediate errors and monitor accuracy and precision of test performance that may be caused by test system failures, environmental conditions and variance in operator performance. ASHI standards provide detailed, specific requirements for the control materials to be used to meet these CLIA requirements.

E. Subpart M—Personnel for Nonwaived Testing

We have determined that ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at § 493.1403 through § 493.1495 for laboratories that perform moderate and high complexity testing. Experience requirements for Director, Technical Supervisor, and General Supervisor exceed CLIA's personnel experience requirements in the specialty of Histocompatibility.

F. Subpart Q—Inspections

We have determined that the ASHI requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at § 493.1771 through § 493.1780. ASHI inspections are more frequent than CLIA requires. ASHI performs an onsite inspection every 2 years and requires submission of a self-evaluation inspection in the intervening years. If the self-evaluation inspection indicates that an onsite inspection is warranted, ASHI conducts an additional onsite review.

G. Subpart R—Enforcement Procedures

ASHI meets the requirements of subpart R to the extent that it applies to accreditation organizations. ASHI policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, ASHI will deny, suspend, or revoke accreditation in a laboratory accredited by ASHI and report that action to us within 30 days. ASHI also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that ASHI's laboratory enforcement and appeal policies are equal to or more stringent than the requirements of part 493 subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of laboratories accredited by ASHI may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by CMS or our agents, or the State survey agencies, will be our principal means for verifying that the laboratories accredited by ASHI remain in compliance with CLIA requirements. This federal monitoring is an ongoing process.

V. Withdrawal of Approval as an Accrediting Organization

Our regulations at 42 CFR 493.575 provide that we may rescind the approval of an accreditation organization, such as that of ASHI, for cause, before the end of the effective date of approval. If we determine that ASHI has failed to adopt, maintain and enforce requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its monitoring, inspection or enforcement processes, we may impose a probationary period, not to exceed 1 year, in which ASHI would be allowed to address any identified issues. Should ASHI be unable to address the identified issues within that timeframe, we may, in accordance with the applicable regulations, revoke ASHI's deeming authority under CLIA.

Should circumstances result in our withdrawal of ASHI's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, record keeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The requirements associated with the accreditation process for clinical laboratories under the CLIA program, codified in 42 CFR part 493 subpart E, are currently approved under OMB control number 0938–0686.

VII. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Dated: April 12, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–09301 Filed 4–21–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Award a Single-Source Program Expansion Supplement Grant to BCFS Health and Human Services in San Antonio, TX

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notice of award of a single-source program expansion supplement grant to BCFS Health and Human Services (BCFS) in San Antonio, TX.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of a single-source program expansion supplement grant for $5,820,000 to BCFS Health and Human Services (BCFS) in San Antonio, TX, under the Unaccompanied Children's (UC) Program to support a program expansion supplement.

The expansion supplement grant will support the need to increase shelter capacity to accommodate the increasing numbers of UCs being referred by DHS.

BCFS has a network of trained, qualified emergency staff able to bring on board and operate emergency beds in short timeframe. BCFS provides residential services to UC in the care and custody of ORR, as well as services to include counseling, case management, and additional support services to the family or to the UC and their sponsor when a UC is released from ORR's care and custody.

DATES: Supplemental award funds will support activities from October 1, 2015 through September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 330 C Street SW., Washington, DC 20201. Email: *DCSProgram@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: While the number of referrals, to the Unaccompanied Children Program in FY 2015, was below the total referrals from FY 2014, ORR has seen a change to recent referral trends. The UC program has seen an increase in the numbers of UC referred for placement since January 2015. FY15 was the first fiscal year, in the history of the UC program, in which there were eight (11) consecutive months of steadily increasing referrals. During FY 15, the largest total referrals occurred during August, with over 4,300 referrals, and these high referral numbers continued into the month of September with 4,172 referrals. In October and November, 2015, the DCS program has received referrals for initial placements for 10,158 unaccompanied children. ORR has experienced a steadily increasing census of UC in care, with longer average length of stay. This increase, in UC referred for placement, has increased the need for additional shelter beds.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet the service requirements and the urgent need for expansion of services. The program's ability to avoid a buildup of children waiting, in Border Patrol stations, for placement in shelters, can only be accommodated through the expansion of the existing program and its services through the supplemental award.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub.L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

Christopher Beach,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–09383 Filed 4–21–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Scientific Evidence in Development of Human Cells, Tissues, and Cellular and Tissue-Based Products Subject to Premarket Approval; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) is announcing a public workshop entitled "Scientific Evidence in Development of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) Subject to Premarket Approval. The purpose of the public workshop is to identify and discuss scientific considerations and challenges to help inform the development of HCT/Ps subject to premarket approval, including stem cell-based products.

DATES: The public workshop will be held on September 8, 2016, from 8:30 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room, Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/aboutfda/workingatfda/buildingsandfacilities/whiteoakcampusinformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Lori Jo Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION: The purpose of the public workshop is to identify and discuss scientific considerations and challenges to help inform the development of HCT/Ps subject to premarket approval, including stem cell-based products.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the rescheduling of a part 15 public hearing to September 12 and 13, 2016, to obtain input on four issued draft guidance documents relating to the regulation of HCT/Ps. FDA will provide a summary of the workshop at the part 15 public hearing.

Registration: Persons (including FDA employees) seeking to view the public workshop via Adobe Connect or who wish to attend in person must register at *http://www.eventbrite.com/o/food-amp-drug-administration-fda-6730245227* on or before August 1, 2016, and provide complete contact information, including name, title, affiliation, email, and phone number. There is no registration fee for the public workshop. Early registration is recommended because seating is limited and is on a first-come, first-served basis. There will be no onsite registration.

If you need special accommodations due to a disability and/or have registration questions, please contact Tasha Johnson or Pauline Cottrell at *CBERPublicEvents@fda.hhs.gov* (Subject line: FDA SEDHC workshop).

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm492499.htm.*

Dated: April 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09373 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1206]

Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Ebola Zaire Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for an in vitro diagnostic device for detection of the Ebola Zaire virus in response to the Ebola virus outbreak in West Africa. FDA issued this Authorization under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by OraSure Technologies, Inc. The Authorization contains, among other things, conditions on the emergency use of the authorized in vitro diagnostic device. The Authorization follows the September 22, 2006, determination by then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security. On the basis of such determination, the Secretary of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of in vitro diagnostic devices for detection of Ebola virus, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of March 4, 2016.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Carmen Maher, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4347, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3), as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the

Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA[1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Request for an In Vitro Diagnostic Device for Detection of the Ebola Zaire Virus

On September 22, 2006, then-Secretary of DHS, Michael Chertoff, determined that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security.[2] On August 5, 2014, under section 564(b)(1) of the FD&C Act and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostic devices for detection of Ebola virus, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on August 12, 2014 (79 FR 47141). On February 29, 2016, OraSure Technologies, Inc. submitted a complete request for, and on March 4, 2016, FDA issued, an EUA for the OraQuick® Ebola Rapid Antigen Test, subject to the terms of the Authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the Internet at *http://www.regulations.gov.*

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of an in vitro diagnostic device for detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) subject to the terms of the Authorization. The Authorization in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act:

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[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

[2] Under section 564(b)(1) of the FD&C Act, the HHS Secretary's declaration that supports the EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat under section 319F–2 of the PHS Act sufficient to affect national security or the health and security of U.S. citizens living abroad (section 564(b)(1)(D) of the FD&C Act).

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

March 4, 2016

Tiffany Miller, RAC
Director, Regulatory Affairs
OraSure Technologies, Inc.
220 East First Street
Bethlehem, PA 18015

Dear Ms. Miller:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the OraQuick® Ebola Rapid Antigen Test[1] for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014)[2] in cadaveric oral fluid swab specimens from individuals with epidemiological risk factors for Ebola virus infection and suspected to have died of Ebola. The test is intended to aid in diagnosing Ebola Zaire virus infection as the cause of death in order to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus in the community. The test is to be used by personnel who are adequately equipped, trained, and capable of testing for Ebola infection, in laboratories, facilities, and in field surveillance and response teams acting under the direction of public health authorities ("covered personnel"), pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3). The OraQuick® Ebola Rapid Antigen Test for use with cadaveric oral fluid is not intended for use with oral fluid specimens from living individuals.

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[3] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of the

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[1] For purposes of this authorization, the term "OraQuick® Ebola Rapid Antigen Test" includes, in addition to the OraQuick® Ebola Rapid Antigen Test Kit, the OraQuick® Ebola Rapid Antigen Test Kit Controls [quality control reagents intended for use only with the OraQuick® Ebola Rapid Antigen Test] and the OraQuick® Ebola Visual Reference Panel [intended to assist new operators in becoming proficient at reading specimens with antigen levels near the limit of detection of the device]. While the OraQuick® Ebola Rapid Antigen Test Kit Controls and OraQuick® Ebola Visual Reference Panel are both sold separately, under this authorization they must be used in conjunction with the OraQuick® Ebola Rapid Antigen Test Kit.

[2] This assay is intended for the qualitative detection of antigens from Ebola virus (species *Zaire ebolavirus*, detected in the West Africa outbreak in 2014), but may also detect antigens from *Sudan ebolavirus* and *Bundibugyo ebolavirus*; however, it does not distinguish between these different Ebola virus species.

[3] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).

Department of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under section 564(a) of the Act (21 U.S.C. § 360bbb-3(a)).[4]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the OraQuick® Ebola Rapid Antigen Test (as described in the Scope of Authorization section of this letter (section II)) for use with cadaveric oral fluid swab specimens from individuals with epidemiological risk factors for Ebola virus infection and suspected to have died of Ebola, to aid in diagnosing Ebola Zaire virus infection as the cause of death in order to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus in the community (as described in the Scope of Authorization section of this letter (section II)).

The OraQuick® Ebola Rapid Antigen Test was previously authorized on July 31, 2015, for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in venipuncture whole blood or fingerstick whole blood specimens from individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors (including geographic locations with high prevalence of Ebola infection), by laboratories and facilities adequately equipped, trained, and capable of testing for Ebola infection (including treatment centers and public health clinics) for circumstances when the use of a rapid Ebola virus test is determined to be more appropriate than the use of an authorized Ebola virus nucleic acid test (available at http://www.fda.gov/downloads/MedicalDevices/Safety/EmergencySituations/UCM456909.pdf).

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the OraQuick® Ebola Rapid Antigen Test for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola Zaire virus (detected in the West Africa outbreak in 2014) can cause Ebola virus disease, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid may be effective as an aid in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection as the cause of death to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus infection in the community and that the known and potential benefits of the OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid as an aid in diagnosing Ebola Zaire

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[4] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus.* 79 Fed. Reg. 47141 (August 12, 2014).

virus (detected in the West Africa outbreak in 2014) infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the OraQuick® Ebola Rapid Antigen Test for use with cadaveric oral fluid as an aid in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection as the cause of death to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus in the community.[5]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized OraQuick® Ebola Rapid Antigen Test by covered personnel for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in cadaveric oral fluid swab specimens from individuals with epidemiological risk factors for Ebola virus infection and suspected to have died of Ebola. The test is intended to aid in diagnosing Ebola Zaire virus infection as the cause of death in order to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus in the community. The authorized OraQuick® Ebola Rapid Antigen Test for use with cadaveric oral fluid is not intended for use with oral fluid specimens from living individuals.

The Authorized OraQuick® Ebola Rapid Antigen Test

The OraQuick® Ebola Rapid Antigen Test is a rapid single-use chromatographic lateral flow immunoassay contained within a rigid plastic device housing that is intended for the *in vitro* qualitative detection of antigens from the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in authorized specimen types.

The OraQuick® Ebola Rapid Antigen Test utilizes a sandwich capture lateral flow immunoassay method to detect Ebola virus antigens. This lateral flow test is composed of an assay strip with several components: the flat pad, the blocker pad, the conjugate pad, the nitrocellulose membrane (with a Test Line ("T") and a Control ("C") line), and the absorbent pad. The clinical specimen is applied to the device followed by insertion of the device into the developer solution. The execution of the assay occurs as reagents are hydrated and liquid is transported along with the specimen across the strip towards the test zone.

If Ebola viral antigens are present in the specimen, then they will be bound by biotinylated anti-Ebola polyclonal antibodies eluting from the blocker pad. These complexed Ebola antigens will then form immunological sandwiches with signal generating colloidal gold labeled Ebola antibodies that are eluting from the conjugate pad. The immunological sandwich complex is subsequently captured through reaction of the biotinylated anti-Ebola antibody with the biotin binding protein streptavidin that is immobilized at the Test Line ("T") of the test strip.

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[5] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The OraQuick® Ebola Rapid Antigen Test Kit is comprised of an OraQuick® Ebola Rapid Antigen Test device, a filled, capped and labeled Developer Vial, a device stand (used to hold the device during the running of the test following specimen collection), micropipettes, one quick reference guide for cadaveric oral fluid testing, and one package insert for cadaveric oral fluid testing. The OraQuick® Ebola Rapid Antigen Test Kit may also include one quick reference guide and one package insert for other currently authorized use(s). The OraQuick® Ebola Rapid Antigen Test device, the developer solution and the micropipettes to be used with the device are identical for both authorized test methods (i.e., use with whole blood from a living individual, and for cadaveric oral fluid); however, the instructions for use are different.

The test kit has a built-in procedural control that demonstrates assay validity. A purple line in the Control ("C") area of the Result Window indicates that the fluid migrated appropriately through the Test Device. The Control line will appear on all valid tests, whether or not the sample is positive (i.e., reactive) or negative (i.e., non-reactive).

The cadaveric oral fluid specimens to be tested with the above described OraQuick® Ebola Rapid Antigen Test are collected by swabbing the gum of the deceased individual. Swabbing can be performed directly with the Oraquick® Ebola Rapid Antigen Test device or with a validated and authorized swab that is subsequently stored in a validated and authorized viral transport media. Please refer to the Oraquick® Ebola Rapid Antigen Test - Instructions for Use - Cadaveric Oral Fluid for information on validated swabs and viral transport media.

The OraQuick® Ebola Rapid Antigen Test Kit Controls must be used with the OraQuick® Ebola Rapid Antigen Test. The OraQuick® Ebola Rapid Antigen Test Kit Controls contain two vials, one Ebola positive control vial (orange capped) and one Ebola negative control vial (white capped).

The OraQuick® Ebola Visual Reference Panel is intended to assist new operators in becoming proficient at reading specimens with antigen levels near the limit of detection of the device. It consists of three devices that have been specifically formulated and manufactured to represent positive results near the limit of detection, low positive, and negative test results. New operators must be able to correctly interpret all devices of the OraQuick® Ebola Visual Reference Panel prior to using the OraQuick® Ebola Rapid Antigen Test device.

The above described OraQuick® Ebola Rapid Antigen Test, when labeled consistently with the labeling authorized by FDA entitled "OraQuick® Ebola Rapid Antigen Test Instructions for Use - Cadaveric Oral Fluid" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by OraSure Technologies, Inc. in consultation with FDA, is authorized to be distributed to laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola virus, and stakeholders working with such public health authorities, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described OraQuick® Ebola Rapid Antigen Test is authorized to be accompanied by the following information pertaining to the emergency use with cadaveric oral fluid, which is authorized to be made available to response teams and relatives/caregivers of deceased individuals:

- Fact Sheet for Ebola Response Teams: Interpreting Results from the OraQuick® Ebola Rapid Antigen Test for use with Cadaveric Oral Fluid
- Fact Sheet for Relatives and Caregivers: Understanding Results from the OraQuick® Ebola Rapid Antigen Test

As described in section IV below, OraSure Technologies, Inc. and any authorized distributor(s) are also authorized to make available additional information relating to the emergency use of the authorized OraQuick® Ebola Rapid Antigen Test, when used with cadaveric oral fluid, which is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized OraQuick® Ebola Rapid Antigen Test in the specified population, when used for detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in cadaveric oral fluid swab specimens, outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid may be effective as an aid in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection pursuant to section 564(c)(2)(A) of the Act. FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in section I above, and concludes that the authorized OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid to aid in diagnosing Ebola Zaire virus infection as the cause of death in order to inform decisions on safe and dignified burial procedures to prevent transmission of Ebola virus in the community, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (section II) and the Conditions of Authorization (section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid is authorized to aid in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) as the cause of death in individuals with epidemiological risk factors for Ebola virus infection and suspected to have died of Ebola.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the OraQuick® Ebola Rapid Antigen Test during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the OraQuick® Ebola Rapid Antigen Test.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

OraSure Technologies, Inc. and Any Authorized Distributor(s)

A. OraSure Technologies, Inc. and any authorized distributor(s) will distribute the authorized OraQuick® Ebola Rapid Antigen Test with the authorized labeling, as may be revised by OraSure Technologies, Inc. in consultation with FDA, to laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities.

B. OraSure Technologies, Inc. and any authorized distributor(s) will provide to laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Response Teams and the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Relatives and Caregivers.

C. OraSure Technologies, Inc. and any authorized distributor(s) will make available on their websites the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Response Teams and the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Relatives and Caregivers.

D. OraSure Technologies, Inc. and any authorized distributor(s) will inform laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, and any other relevant public health authority(ies), of this EUA, including the terms and conditions herein.

E. OraSure Technologies, Inc. and any authorized distributor(s) will ensure that first time users of the OraQuick® Ebola Rapid Antigen Test Kit will be informed about the requirement for use of the control material and the visual reference panel.

F. OraSure Technologies, Inc. and any authorized distributor(s) will ensure that laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, using the authorized OraQuick® Ebola Rapid Antigen Test have a process in place for reporting test results to relevant public health authorities, as appropriate.

G. Through a process of inventory control, OraSure Technologies, Inc. and any authorized distributor(s) will maintain records of device usage.

H. OraSure Technologies, Inc. and any authorized distributor(s) will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which OraSure Technologies, Inc. and any authorized distributor(s) become aware.

I. OraSure Technologies, Inc. and any authorized distributor(s) are authorized to make available additional information relating to the emergency use of the authorized OraQuick® Ebola Rapid Antigen Test for use with cadaveric oral fluid that is consistent with, and does not exceed, the terms of this letter of authorization.

OraSure Technologies, Inc.

J. OraSure Technologies, Inc. will notify FDA of any authorized distributor(s) of the OraQuick® Ebola Rapid Antigen Test, including the name, address, and phone number of any authorized distributor(s).

K. OraSure Technologies, Inc. will provide any authorized distributor(s) with a copy of this EUA, and communicate to any authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., fact sheets, instructions for use).

L. OraSure Technologies, Inc. only may request changes to the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Response Teams or the authorized OraQuick® Ebola Rapid Antigen Test Fact Sheet for Relatives and Caregivers. Such requests will be made only by OraSure Technologies, Inc. in consultation with, and require concurrence of, FDA.

M. OraSure Technologies, Inc. may request the addition of other specimen types for use with the authorized OraQuick® Ebola Rapid Antigen Test. Such requests will be made by OraSure Technologies, Inc. in consultation with, and require concurrence of, FDA.

N. OraSure Technologies, Inc. may request the addition of other cadaveric oral fluid collection methods, including other swab and/or viral transport media, for use with the authorized OraQuick® Ebola Rapid Antigen Test for use with cadaveric oral fluid. Such requests will be made by OraSure Technologies, Inc. in consultation with, and require concurrence of, FDA.

O. OraSure Technologies, Inc. will track adverse events and report to FDA under 21 CFR Part 803.

P. OraSure Technologies, Inc. will contact health care providers, public health authorities, and stakeholders working with such public health authorities in the event of any significant new findings that negatively impact the performance of the test and that are observed during the course of the emergency use of the OraQuick® Ebola Rapid Antigen Test when used with cadaveric oral fluid.

Q. OraSure Technologies, Inc. will submit additional data (i.e., an LOD study with cadaveric oral fluid swab specimens, a cross reactivity study for potential cross reacting organisms relevant to oral fluid and an interference study with potentially interfering substances relevant to oral fluid) to FDA no later than 6 months after authorization [September 4, 2016].

Laboratories, Facilities, and Public Health Authorities Overseeing Personnel Adequately Equipped, Trained, and Capable of Testing for Ebola Infection, and Stakeholders Working with Such Public Health Authorities

R. Laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, will provide the authorized Fact Sheet for Response Teams to personnel performing the cadaveric oral fluid testing, and will include with reports of the OraQuick® Ebola Rapid Antigen Test results the authorized Fact Sheet for Relatives and Caregivers. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

S. Laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, will have a process in place for the personnel performing the test to report test results back to the overseeing entity and to health care professionals, as appropriate.

T. Laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, will collect information on the performance of the assay, and report to OraSure Technologies, Inc. and any authorized distributor(s) any suspected occurrence of false positive or false negative results of which they become aware.

U. All covered personnel will be appropriately trained on the OraQuick® Ebola Rapid Antigen Test and use appropriate laboratory and/or personal protective equipment when handling this kit.

OraSure Technologies, Inc., Any Authorized Distributor(s), and Laboratories, Facilities, and Public Health Authorities Overseeing Personnel Adequately Equipped, Trained, and Capable of Testing for Ebola Infection, and Stakeholders Working with Such Public Health Authorities

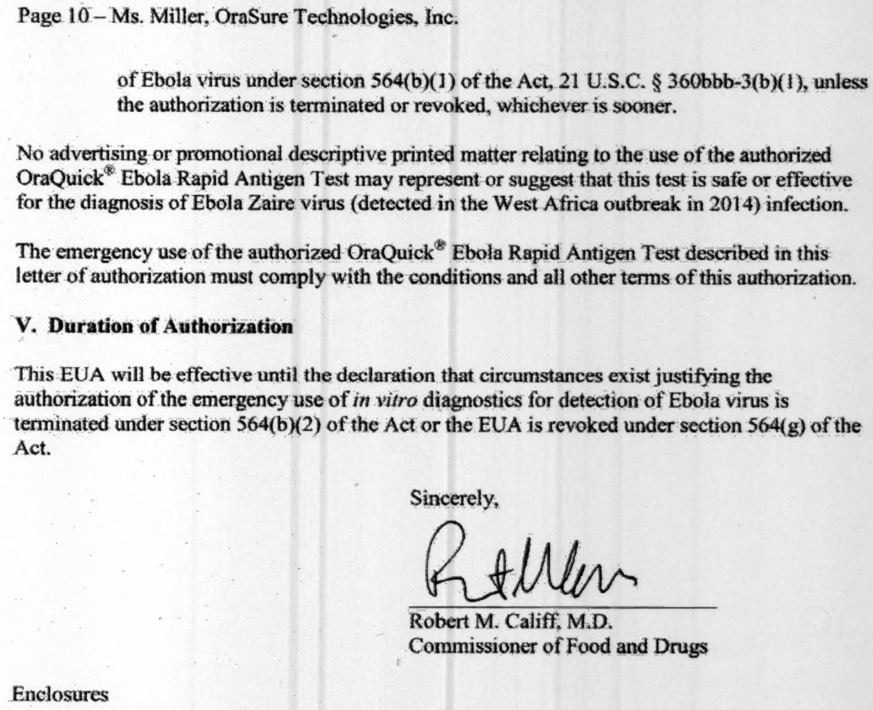
V. OraSure Technologies, Inc., any authorized distributor(s), and laboratories, facilities, and public health authorities overseeing personnel adequately equipped, trained, and capable of testing for Ebola infection, and stakeholders working with such public health authorities, will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

W. All advertising and promotional descriptive printed matter relating to the use of the authorized OraQuick® Ebola Rapid Antigen Test shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

X. All advertising and promotional descriptive printed matter relating to the use of the authorized OraQuick® Ebola Rapid Antigen Test shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by personnel who are adequately equipped, trained, and capable of testing for Ebola infection, in laboratories, facilities, and in field surveillance and response teams acting under the direction of public health authorities;
- This test has been authorized only for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014); and
- This test has not been authorized for use with oral fluid from living individuals
- This test is authorized only for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection



of Ebola virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked, whichever is sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized OraQuick® Ebola Rapid Antigen Test may represent or suggest that this test is safe or effective for the diagnosis of Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection.

The emergency use of the authorized OraQuick® Ebola Rapid Antigen Test described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Robert M. Califf, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: April 18, 2016.
Leslie Kux,
Associate Commissioner for Policy.

[FR Doc. 2016–09369 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0370]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices; Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for firms that intend to export certain unapproved medical devices.

DATES: Submit either electronic or written comments on the collection of information by June 21, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0370 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices; Foreign Letters of Approval." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Export of Medical Devices; Foreign Letters of Approval—OMB Control Number 0910–0264—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export. Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or Agency of the United States. The respondents to this collection of information are companies that seek to export medical devices. FDA's estimate of the reporting burden is based on the experience of FDA's medical device program personnel.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity/section of FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Foreign letter of approval—§ 801(e)(2)	38	1	38	3	114	$9,500

[1] There are no capital costs associated with this collection of information.

Dated: April 15, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09368 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2329]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUZU

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LUZU and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by June 21, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 19, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–E–2329, For Determination of Regulatory Review Period for Purposes of Patent Extension; LUZU. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product LUZU (luliconazole). LUZU is indicated for topical treatment of interdigital tinea pedis, tinea cruris, and tinea corporis caused by the organisms *Tricophyton* *rubrum* and *Epidermophyton floccosum* in patients 18 years of age and older. Subsequent to this approval, the USPTO received a patent term restoration application for LUZU (U.S. Patent No. 5,900,488) from Nihon Nohyaku Co., Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of LUZU represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for LUZU is 2,242 days. Of this time, 1,903 days occurred during the testing phase of the regulatory review period, while 339 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* September 27, 2007. FDA has verified the Nihon Nohyaku Co., Ltd. claim that September 27, 2007, is the date the investigational new drug application (IND) became effective.
2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 11, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for LUZU (NDA 204153) was initially submitted on December 11, 2012.
3. *The date the application was approved:* November 14, 2013. FDA has verified the applicant's claim that NDA 204153 was approved on November 14, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,289 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: April 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09374 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0969]

Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Zika Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for an in vitro diagnostic device for detection of Zika virus in response to the Zika virus outbreak in the Americas. FDA issued this Authorization under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by the U.S. Centers for Disease Control and Prevention (CDC). The Authorization contains, among other things, conditions on the emergency use of the authorized in vitro diagnostic device. The Authorization follows the February 26, 2016, determination by the Department of Health and Human Services (HHS) Secretary that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On the basis of such determination, the HHS Secretary declared on February 26, 2016, that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of March 17, 2016.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Carmen Maher, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4347, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360(e)), or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the CDC (to the extent feasible and appropriate given the applicable circumstances), FDA[1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Request for an In Vitro Diagnostic Device for Detection of Zika Virus

On February 26, 2016, the Secretary of HHS determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On February 26, 2016, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the determination and declaration of the Secretary was published in the **Federal Register** on March 2, 2016 (81 FR 10878). On March 14, 2016, CDC requested, and on March 17, 2016, FDA issued, an EUA for the CDC Trioplex Real-time RT-PCR Assay (Trioplex rRT-PCR), subject to the terms of the Authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the Internet at *http://www.regulations.gov*.

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of an in vitro diagnostic device for detection of Zika virus subject to the terms of the Authorization. The Authorization in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act.

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[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

March 17, 2016

Thomas R. Frieden, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Rd, MS D-14
Atlanta, GA 30333

Dear Dr. Frieden:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the Centers for Disease Control and Prevention's (CDC) Trioplex Real-time RT-PCR Assay (Trioplex rRT-PCR) for the qualitative detection and differentiation of RNA from Zika virus, dengue virus, and chikungunya virus in human sera or cerebrospinal fluid (collected alongside a patient-matched serum specimen), and for the qualitative detection of Zika virus RNA in urine and amniotic fluid (each collected alongside a patient-matched serum specimen), pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3). The assay is intended for use with specimens collected from individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated as part of a public health investigation), by qualified laboratories designated by CDC and, in the United States, certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests.[1] Assay results are for the identification of Zika, dengue, and chikungunya viral RNA. Viral RNA is generally detectable in serum during the acute phase of infection (approximately 7 days following onset of symptoms, if present). Positive results are indicative of current infection.

On February 26, 2016, pursuant to section 564(b)(1)(C) of the Act (21 U.S.C. § 360bbb-3(b)(1)(C), the Secretary of Health and Human Services (HHS) determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS then declared that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[3]

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[1] For ease of reference, this letter will refer to "qualified laboratories designated by CDC and, in the United States, certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests" as "authorized laboratories."

[2] As amended by the Pandemic and All Hazards Preparedness Reauthorization Act, Pub. L. No. 113-5, under section 564(b)(1)(C) of the Act, the Secretary may make a determination of a public health emergency, or of a significant potential for a public health emergency.

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the Trioplex rRT-PCR (as described in the Scope of Authorization section of this letter (Section II)) in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated as part of a public health investigation) (as described in the Scope of Authorization section of this letter (Section II)) for the detection of Zika virus infection by authorized laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the Trioplex rRT-PCR for the detection of Zika virus and diagnosis of Zika virus infection in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Zika virus can cause Zika virus infection, a serious or life-threatening disease or condition to humans infected with the virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Trioplex rRT-PCR, when used with the specified instrument and in accordance with the Scope of Authorization, may be effective in detecting Zika virus and diagnosing Zika virus infection, and that the known and potential benefits of the Trioplex rRT-PCR for detecting of Zika virus and diagnosing Zika virus infection outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the Trioplex rRT-PCR for diagnosing Zika virus infection.[4]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized Trioplex rRT-PCR by authorized laboratories for the detection and differentiation of RNA from Zika virus, dengue virus, and chikungunya virus in human sera or cerebrospinal fluid (collected alongside a patient-matched serum specimen), and for the detection of Zika virus RNA in urine and amniotic fluid (each collected alongside a patient-matched serum specimen), in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated as part of a public health investigation).

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[3] HHS. *Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection.* 81 Fed. Reg. 10878 (March 2, 2016).

[4] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The Authorized Trioplex rRT-PCR

The CDC Trioplex rRT-PCR is a real-time reverse transcriptase PCR (rRT-PCR) for the in vitro qualitative detection and differentiation of Zika virus, dengue virus, and chikungunya virus in sera, CSF, and other authorized specimen types collected from individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated as part of a public health investigation). The Trioplex rRT-PCR can also be used with urine and amniotic fluid specimens when tested in conjunction with a patient-matched serum specimen and other authorized whole blood derived specimen types. The test procedure consists of nucleic acid extraction using the MagNA Pure LC Total Nucleic Acid Isolation Kit, the Qiagen QIAamp® Viral RNA Mini kit or other authorized extraction method, followed by rRT-PCR on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR instrument or other authorized instruments using SuperScript™ III RT/Platinum® One-Step qRT-PCR Kit, Quanta qScript™ One-Step qRT-PCR Kit, Low Rox™ or other authorized PCR enzyme Kits.

The Trioplex rRT-PCR includes primers and dual-labeled hydrolysis (Taqman®) probes to be used in the in vitro qualitative detection of Zika virus RNA isolated from clinical specimens including serum (from serum separator tubes), CSF, urine, and amniotic fluid, and any other authorized specimens. A reverse transcription step produces cDNA from RNA present in the sample. The probe binds to the target DNA between the two unlabeled PCR primers. For the dengue virus-specific probe, the signal from the fluorescent dye (FAM) on the 5' end is quenched by BHQ-1 on its 3' end. For the chikungunya virus-specific probe, the signal from the fluorescent dye (HEX) on the 5' end is quenched by BHQ-1 on its 3' end. For the Zika virus-specific probe, the signal from the fluorescent dye (Texas Red [TxRd]) on the 5'end is quenched by BHQ-2 on its 3' end. During PCR, Taq polymerase extends the unlabeled primers using the template strand as a guide, and when it reaches the probe it cleaves the probe separating the dye from the quencher allowing it to fluoresce. The Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR instrument and other authorized instruments detect this fluorescence from the unquenched dye. With each cycle of PCR, more probes are cleaved resulting in an increase in fluorescence that is proportional to the amount of target nucleic acid present. Testing is performed in a 96 well plate format.

The Trioplex rRT-PCR includes the following materials:

- CDC Trioplex rRT-PCR Primer and Probe sets for the detection of dengue virus (DENV), chikungunya virus (CHIKV), Zika virus (ZIKV) and the extraction control RNAse P (RP).

  - DENV-F, DENV-R1, DENV-R2, and P
  - CHIKV-F, R and P
  - ZIKV-F, R and P
  - RP-F, R and P

- Trioplex Real-Time RT-PCR Positive Control Set
  - Inactivated dengue virus
  - Inactivated chikungunya virus
  - Inactivated Zika virus
  - Human specimen control - extraction control and positive control for RP

The Trioplex rRT-PCR requires the following control materials; all assay controls listed below should be run concurrently with all test samples and must generate expected results in order for a test to be considered valid:

- **Human specimen control (HSC)**
  Noninfectious cultured human cell material used as an extraction control and positive control for the RNase P primer and probe set (RP) that is extracted and tested concurrently with the test samples.

- **Positive controls for agent-specific primer and probe sets**
  - Inactivated dengue virus
  - Inactivated chikungunya virus
  - Inactivated Zika virus

- **RNase P Primer and Probe Set (RP)**
  All clinical samples and the HSC should be tested for human RNase P gene (using the RP primer and probe set included in the Trioplex rRT-PCR kit) to control for specimen quality and as an indicator that nucleic acid resulted from the extraction process.

- **No Template Control (NTC)**
  NTC reactions include PCR-grade water in place of specimen RNA and must be included as a contamination control for each reaction mixture (one for the ZIKV, CHIKV and DENV reaction and one for the RP reaction) in each run.

The above described Trioplex rRT-PCR, when labeled consistently with the labeling authorized by FDA entitled "Trioplex Real-Time RT-PCR Assay - Instructions for Use" (available at http://www.fda.gov/MedicalDevices/%20Safety/EmergencySituations/ucm161496.htm), which may be revised by CDC in consultation with FDA, is authorized to be distributed to and used by authorized laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described Trioplex rRT-PCR is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care providers, pregnant women, and other patients:

- Fact Sheet for Health Care Providers: Interpreting Trioplex Real-Time RT-PCR Assay (Trioplex rRT-PCR) Results
- Fact Sheet for Pregnant Women: Understanding Results from the Trioplex Real-Time RT-PCR Assay (Trioplex rRT-PCR)
- Fact Sheet for Patients: Understanding Results from the Trioplex Real-Time RT-PCR Assay (Trioplex rRT-PCR)

As described in Section IV below, CDC is also authorized to make available additional information relating to the emergency use of the authorized Trioplex rRT-PCR that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized Trioplex rRT-PCR in the specified population, when used for detection of Zika virus and to diagnose Zika virus infection and used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized Trioplex rRT-PCR may be effective in the detection of Zika virus and diagnosis of Zika virus infection, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized Trioplex rRT-PCR, when used for detection of Zika virus and to diagnose Zika virus infection in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized Trioplex rRT-PCR under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the Trioplex rRT-PCR described above is authorized to detect Zika virus and diagnose Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to geographic regions during a period of active Zika virus transmissions at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated as part of a public health investigation).

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the Trioplex rRT-PCR during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the Trioplex rRT-PCR.
- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Centers for Disease Control and Prevention (CDC)

A. CDC will distribute the authorized Trioplex rRT-PCR with the authorized labeling, as may be revised by CDC in consultation with FDA, only to authorized laboratories.

B. CDC will provide to authorized laboratories the authorized Trioplex rRT-PCR Fact Sheet for Health Care Providers, the authorized Trioplex rRT-PCR Fact Sheet for Pregnant Women, and the authorized Trioplex rRT-PCR Fact Sheet for Patients.

C. CDC will make available on its website the authorized Trioplex rRT-PCR Fact Sheet for Health Care Providers, the authorized Trioplex rRT-PCR Fact Sheet for Pregnant Women, and the authorized Trioplex rRT-PCR Fact Sheet for Patients.

D. CDC will inform authorized laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. CDC will ensure that authorized laboratories using the authorized Trioplex rRT-PCR have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.

F. CDC will track adverse events and report to FDA under 21 CFR Part 803.

G. Through a process of inventory control, CDC will maintain records of device usage.

H. CDC will collect information on the performance of the assay. CDC will report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of the assay of which CDC becomes aware.

I. CDC is authorized to make available additional information relating to the emergency use of the authorized Trioplex rRT-PCR that is consistent with, and does not exceed, the terms of this letter of authorization.

J. CDC may request changes to the authorized Trioplex rRT-PCR Fact Sheet for Health Care Providers, the authorized Trioplex rRT-PCR Fact Sheet for Pregnant Women, and the authorized Trioplex rRT-PCR Fact Sheet for Patients. Such requests will be made by CDC in consultation with FDA, and require concurrence of, FDA.

K. CDC may request the addition of other real-time PCR instruments for use with the authorized Trioplex rRT-PCR. Such requests will be made by CDC in consultation with, and require concurrence of, FDA.

L. CDC may request the addition of other extraction methods for use with the authorized Trioplex rRT-PCR. Such requests will be made by CDC in consultation with, and require concurrence of, FDA.

M. CDC may request the addition of other specimen types for use with the authorized Trioplex rRT-PCR. Such requests will be made by CDC in consultation with, and require concurrence of, FDA.

N. CDC will assess traceability[5] of the Trioplex rRT-PCR with the interim WHO Zika reference standard when the reference material becomes available. After submission to FDA and FDA's review of and concurrence with the data, CDC will update their labeling to reflect the additional testing.

Authorized Laboratories

O. Authorized laboratories will include with reports of the results of the Trioplex rRT-PCR, the authorized Fact Sheet for Health Care Providers, the authorized Fact Sheet for Pregnant Women, and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

P. Authorized laboratories will perform the Trioplex rRT-PCR on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument or other authorized instruments.

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[5] Traceability refers to tracing analytical sensitivity/reactivity back to the interim WHO Zika reference material.

Q. Authorized laboratories will have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.

R. Authorized laboratories will collect information on the performance of the assay and report to CDC any suspected occurrence of false positive or false negative results of which they become aware.

S. All laboratory personnel using the assay should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit.

CDC and Authorized Laboratories

T. CDC and authorized laboratories will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

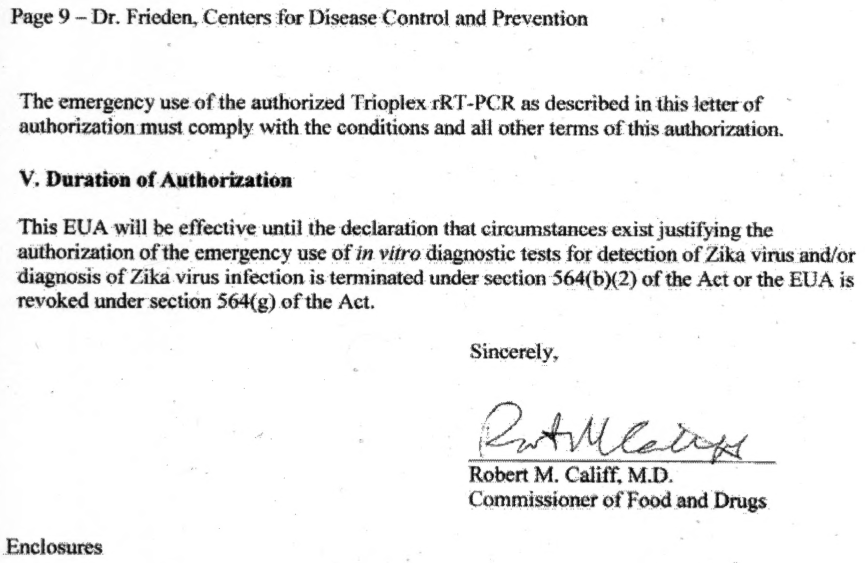
Conditions Related to Advertising and Promotion

U. All advertising and promotional descriptive printed matter relating to the use of the authorized Trioplex rRT-PCR shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

V. All advertising and promotional descriptive printed matter relating to the use of the authorized Trioplex rRT-PCR shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by authorized laboratories;
- This test has been authorized only for the detection and differentiation of RNA from Zika virus, dengue virus, and chikungunya virus, and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized Trioplex rRT-PCR may represent or suggest that this test is safe or effective for the diagnosis of Zika virus infection.



The emergency use of the authorized Trioplex rRT-PCR as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Robert M. Califf, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: April 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09370 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0321]

Risk Assessment of Foodborne Illness Associated With Pathogens From Produce Grown in Fields Amended With Untreated Biological Soil Amendments of Animal Origin; Request for Scientific Data, Information, and Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice entitled "Risk Assessment of Foodborne Illness Associated With Pathogens From Produce Grown in Fields Amended With Untreated Biological Soil Amendments of Animal Origin; Request for Scientific Data, Information, and Comments" that appeared in the **Federal Register** of March 4, 2016. The notice requested scientific data, information, and comments that would assist in the development of a risk assessment for produce grown in fields or other growing areas amended with untreated biological soil amendments of animal origin (including raw manure). We are taking this action for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments by July 5, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–0321 for "Risk Assessment of Foodborne Illness Associated With Pathogens From Produce Grown in Fields Amended With Untreated Biological Soil Amendments of Animal Origin; Request for Scientific Data, Information, and Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jane Van Doren, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2927.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 2016 (81 FR 11572), we published a notice entitled "Risk Assessment of Foodborne Illness Associated with Pathogens from Produce Grown in Fields Amended with Untreated Biological Soil Amendments of Animal Origin; Request for Scientific Data, Information, and Comments." The notice requested scientific data, information, and comments that would assist us in our plan to develop a risk assessment for produce grown in fields or other growing areas amended with untreated biological soil amendments of animal origin (BSAAO) (including raw manure). The risk assessment will evaluate and, if feasible, quantify the risk of human illness associated with consumption of produce grown in fields or other growing areas amended with untreated biological soil amendments of animal origin that are potentially contaminated with enteric pathogens, such as *Escherichia coli* O157:H7 or *Salmonella.* The risk assessment also will evaluate the impact of certain interventions, such as use of a time interval between application of the soil amendment and crop harvest, on the predicted risk. The risk assessment is intended to inform policy decisions with regard to produce safety.

We received multiple requests for an extension of the comment period. The requests conveyed concern that the original 60-day comment period does not allow sufficient time to provide the scientific data, information, and comments described in the notice. We have considered the requests and are extending the comment period for the notice until July 5, 2016. We believe that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

Dated: April 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09367 Filed 4–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Intent To Establish the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 and Solicitation of Nominations for Membership; Correction

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** notice first published on March 17, 2016, on page 14455, and corrected on April 12, 2016, on page 21581, the U.S. Department of Health and Human Services announced its intent to establish the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee) and invited nominations for membership. The nomination period is scheduled to end at 6:00 p.m. on April 18, 2016. The notice is being amended to extend the solicitation period for nominations for two weeks to allow more time for interested individuals to submit nominations.

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, email address: *HP2030@hhs.gov.*

Correction

In the **Federal Register**, dated March 17, 2016, on page 14455, correct the **DATES** section to read:

Nominations for membership to the Committee must be submitted by 6:00 p.m. Eastern Time on May 2, 2016.

Dated: April 13, 2016.

Donald Wright,

Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.

[FR Doc. 2016–09132 Filed 4–21–16; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel NTU 2016.

Date: May 18–19, 2016.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Room 1066, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational, Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 18, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–09314 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Research Centers in Trauma, Burn and Perioperative Injury.

Date: May 6, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An. 12N, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 18, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–09316 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; The Framingham Heart Study (NHLBI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on 12/31/2015, pages 81830–81832. No comment s were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Deshiree Belis, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Dr., Suite 6185A, Bethesda, MD 20892, or call non-toll-free number 301–435–1032, or Email your request, including your address to *deshiree.belis@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The Framingham Heart Study, 0925–0216, Revision, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: This proposal is to extend the Framingham Study to examine the Generation Three Cohort, New Offspring Spouses and Omni Group 2 Cohort, as well as to continue to monitor the morbidity and mortality which occurs in all Framingham Cohorts. The contractor, with the collaborative assistance of NHLBI Intramural staff, will invite study participants, schedule appointments, administer examinations and testing, enter information into computer databases for editing, and prepare scientific reports of the information for publication in appropriate scientific journals. All participants have been examined previously and thus the study deals with a stable, carefully described group. Data are collected in the form of an observational health examination involving such components as blood pressure measurements, venipuncture, electrocardiography and a health interview, including questions about lifestyles and daily living situations. The National Heart, Lung, and Blood Institute uses the results of the Framingham Study to: (1) Characterize risk factors for cardiovascular and lung diseases so that national prevention programs can be designed and implemented; (2) evaluate trends in cardiovascular diseases and risk factors over time to measure the impact of overall preventive measures; and (3) understand the etiology of cardiovascular and lung diseases so that effective treatment and preventive modalities can be developed and tested. Most of the reports of study results have been published in peer reviewed medical journals and books.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 8,382.

Estimated Annualized Burden Hours

TABLE A.12–1.1—ESTIMATE OF RESPONDENT BURDEN, ORIGINAL COHORT ANNUALIZED

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
I. Participant Components Annual Follow-Up:				
a. Records Request (Attach #5)	30	1	15/60	8
b. Health Status Update (Attach #3)	30	1	15/60	8
Sub-Total: Participant Components	*30			15
II. Non-Participant Components:				
A. Informant Contact (Pre-exam and Annual Follow-up) (Attach #3—pages 3–7)	15	1	10/60	3
B. Health Care Provider Records Request (Annual follow-up) (Attach #5)	30	1	15/60	8
Sub-Total: Non-Participant Components	45			10
Total: Participant and Non-Participant Components	75	75		25

*Number of participants as reflected in Row I.b. above.

TABLE A.12–1.2—ESTIMATE OF RESPONDENT BURDEN, OFFSPRING COHORT AND OMNI GROUP 1 COHORT ANNUALIZED

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
I. Participant Components Annual Follow-Up:				
a. Records Request (Attach #5)	1500	1	15/60	375
b. Health Status Update (Attach #3)	1700	1	15/60	425
Sub-Total: Participant Components	*1700			800
II. Non-Participant Components:				
A. Informant contact (Pre-exam and Annual Follow-up) (Attach #3–pages 3–7)	150	1	10/60	25
B. Health Care Provider Records Request (Annual follow-up) (Attach #5)	1500	1	15/60	375
Sub-Total: Non-Participant Components	1650			400
Total: Participant and Non-Participant Components	3350	3350		1200

*Number of participants as reflected in Row I.b. above.

TABLE A.12—1.3—ESTIMATE OF RESPONDENT BURDEN, GENERATION 3 COHORT, NOS AND OMNI GROUP 2 COHORT ANNUALIZED

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
I. Participant Components:				
A. Pre-Exam				
1.Telephone contact for appointment	1,450	1	10/60	242
2. Exam appointment, scheduling, reminder and instructions (Attach #6)	1,270	1	35/60	741
B. Exam Cycle 3				
1. Exam at study center (Attach #1)	1,200	1	90/60	1,800
2. Consent (Attach #10)	1,200	1	20/60	400
2. Home or nursing home visit (Attach #1—partial as respondent is capable)	35	1	1	35
C. Post–Exam				
eFHS Mobile Technology for Collection of CVD Risks (Attach #2)	1,100	18	9/60	2,970
D. Annual Follow—Up				
1. Records Request (Attach #5)	1,200	1	15/60	300
2. Health Status Update (Attach #3)	1,400	1	15/60	350
Sub-Total: Participant Components	*2,850			6,830
II. Non-Participant Components–Annual Follow-Up:				
A. Informant Contacts (Attach #3—pages 3–7)	180	1	10/60	30
B. Health Care Provider Record Request (Attach #5)	1,155	1	15/60	289
Sub-Total: Non-Participant Components	1,335			319
Total: Participant and Non-Participant Components	4,185	28,890		7,157

*Number of participants as reflected in Rows I.A.1 and I.D.2 above.

Estimates of annualized total hour burden are summarized in Table A.12–1.4 Below.

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Participants	4580	1	90/60	7,653
Non-Participants	3030	1	15/60	729
Totals	7610	2		8,382

(Note: reported and calculated numbers differ slightly due to rounding.)

Dated: April 18, 2016.

Valery Gheen,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2016–09313 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Anti-CD70 Chimeric Antigen Receptors (CARs) for the Treatment of Chronic Myelogenous Leukemia

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Cancer Institute, National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Dedalus Pharma, LLC (“Dedalus”) located in Maryland, USA.

Intellectual Property

United States Provisional Patent Application No. 62/088,882, filed December 8, 2014, entitled “Anti-CD70 Chimeric Antigen Receptors” [HHS Reference No. E–021–2015/0–US–01]; and PCT Application No. PCT/US2015/025047 filed April 9, 2015 entitled “Anti-CD70 Chimeric Antigen Receptors” [HHS Reference No. E–021–2015/0–PCT–02].

The patent rights in these inventions have been assigned to the government of the United States of America.

The patent rights in these inventions have been assigned to the government of the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to the development and commercialization of CD70 chimeric antigen receptor (CAR)-based autologous peripheral blood T cell therapy products as set forth in the Licensed Patent Rights for the treatment of chronic myelogenous leukemia in humans.

DATES: Only written comments and/or applications for a license which are received by the Technology Transfer Center at the National Cancer Institute on or before May 9, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Andrew Burke, Ph.D., Licensing and Patenting Manager, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, MSC 9702, Rockville, MD 20852; Telephone: (240) 276–5484; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION: The present invention describes chimeric antigen receptors (CARs) targeting CD70. CARs are hybrid proteins comprised of extracellular antigen binding domains and intracellular signaling domains designed to activate the cytotoxic functions of CAR-transduced T cells upon antigen stimulation.

CD70 is a co-stimulatory molecule that provides proliferative and survival cues to competent cells upon binding to its cognate receptor, CD27. Its expression is primarily restricted to activated lymphoid cells; however, recent research has demonstrated that several cancers, including renal cell carcinoma, glioblastoma, non-Hodgkin’s lymphoma, and chronic myelogenous leukemia also express CD70 under certain circumstances. Due to its limited expression in normal tissues, CARs targeting CD70 may be useful in adoptive cell therapy protocols for the treatment of select cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NCI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in an appropriate field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 18, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–09324 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture (NIEHS)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 27, 2015, Pages 74115–74116, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information

collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dale Sandler, Ph.D., Chief, Epidemiology Branch, National Institute of Environmental Health Sciences, NIH, 111 T.W. Alexander Drive, P.O. Box 12233, MD A3–05, Research Triangle Park, NC 27709, or call non-toll-free number 919–541–4668, or email your request, including your address to: *sandler@niehs.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture, 0925–0406 (Expiration Date 9/30/2016, REVISION), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this information collection is to request new components as part of the ongoing Study of Biomarkers of Exposures and Effects in Agriculture (BEEA), as well as continue and complete phase IV (2013–2016) of the Agricultural Health Study (AHS) and continue buccal cell collection. Phase IV will continue to update the occupational and environmental exposure information as well as medical history information for licensed pesticide applicators and their spouses enrolled in the AHS. The new BEEA components are a control respondent group, and a smartphone application (app), along with new sample collection (buccal cell and air monitoring samples). The new components will use similar procedures to ones already employed on the BEEA study, as well as other NCI studies. The primary objectives of the study are to determine the health effects resulting from occupational and environmental exposures in the agricultural environment. Secondary objectives include evaluating biological markers that may be associated with agricultural exposures and risk of certain types of cancer. Phase IV questionnaire data are collected by using self-administered computer assisted web survey (CAWI); self-administered paper-and-pen (Paper/pen); or an interviewer administered computer assisted telephone interview (CATI) and in-person interview (CAPI) systems for telephone screeners and home visit interviews, respectively. Some respondents are also asked to participate in the collection of biospecimens and environmental samples, including blood, urine, buccal cells (loose cells from the respondent's mouth), and vacuum dust. The findings will provide valuable information concerning the potential link between agricultural exposures and cancer and other chronic diseases among Agricultural Health Study cohort members, and this information may be generalized to the entire agricultural community.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 11,440.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Private and Commercial Applicators and Spouses.	IA/NC Scripts for Verbal Consent for Buccal	100	1	3/60	5
Private and Commercial Applicators and Spouses.	IA/NC Written Consent for Buccal	100	1	5/60	8
Private and Commercial Applicators and Spouses.	Buccal Follow-up Scripts (as needed): Reminder, Missing Consent, or Damaged/Missing Sample.	30	1	2/60	1
Private Applicators	BEEA CATI Screening Script for RSG, REG or AMG Eligibility.	480	1	20/60	160
Private Applicators	IA/NC BEEA Consent for RSG Home Visit or REG Home Visit or AMG Home Visit.	196	1	5/60	16
Private Applicators	IA/NC BEEA RSG Pre-Visit Show Card	160	1	5/60	13
Private Applicators	IA/NC BEEA RSG Paper/Pen Dust Questionnaire.	160	1	10/60	27
Private Applicators	BEEA RSG Pre-Home Visit Script	160	1	2/60	5
Private Applicators	BEEA RSG Home Visit CAPI, Blood, Buccal cell, Urine & Dust.	160	1	90/60	240
Private Applicators	IA/NC BEEA REG Pre-Visit Show Card	20	3	5/60	5
Private Applicators	IA/NC BEEA REG Paper/Pen Dust Questionnaire.	20	3	10/60	10
Private Applicators	BEEA REG Pre-Home Visit Script	20	3	2/60	2
Private Applicators	BEEA REG Home Visit CAPI, Blood, Buccal cell, Urine & Dust.	20	3	90/60	90
Private Applicators	IA/NC BEEA REG Post-Exposure Scheduling Script.	20	1	2/60	1
Private Applicators	IA/NC BEEA AMG Pre-Visit Show Card	16	2	5/60	3
Private Applicators	IA/NC BEEA AMG Paper/Pen Dust Questionnaire.	16	2	10/60	5
Private Applicators	BEEA AMG Pre-Home Visit Script	16	2	2/60	1
Private Applicators	BEEA AMG Home Visit CAPI, Blood, Urine, Buccal cell & Dust.	16	2	90/60	48

Estimated Annualized Burden Hours—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Private Applicators	IA/NC BEEA Consent for AMG Farm Visit	16	1	5/60	1
Private Applicators	BEEA Pre-Farm Visit Script	16	2	2/60	1
Controls	BEEA CATI Control Eligibility Script	215	1	20/60	72
Controls	IA/NC BEEA Control Home Visit Consent	67	1	5/60	6
Controls	IA/NC BEEA Pre-Visit Show Card	67	1	5/60	6
Controls	IA/NC BEEA Paper/Pen Dust Questionnaire	67	1	10/60	11
Controls	BEEA REG Pre-Visit Script	67	1	2/60	2
Controls	BEEA Control Home Visit CAPI, Blood, Buccal cell, Urine, & Dust.	67	1	90/60	101
Private Applicators	'Life in a Day' Smartphone App Consent and Setup.	78	1	20/60	26
Private Applicators	'Life in a Day' Smartphone Application	78	30	10/60	390
Private Applicators	Phase IV Follow-up CAWI, CATI, or Paper/pen.	13,855	1	25/60	5,773
Spouses	Phase IV Follow-up CAWI, CATI, or Paper/pen.	10,201	1	25/60	4,250
Proxy	Phase IV Follow-up CAWI, CATI, or Paper/pen.	635	1	15/60	159
Total		27,139	29,641		11,438

Dated: April 18, 2016.

Jane M. Lambert,

Project Clearance Liaison, NIEHS.

[FR Doc. 2016–09296 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Institutional Training and Education.

Date: June 14, 2016.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Bethesda, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Comprehensive Partnerships to Advance Cancer Health Equity (CPACHE) (U54).

Date: June 15–16, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yisong Wang, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W240, Bethesda, MD 20892–9750, 240–276–7157, *yisong.wang@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 18, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–09315 Filed 4–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0123]

Agency Information Collection Activities: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before May 23, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 7363) on February 11, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the CBP Regulations).

OMB Number: 1651–0123.

Abstract: Title 19 of the United States Code section 1526(e) prohibits the importation of articles that bear a counterfeit mark of a trademark that is registered with the United States Patent and Trademark Office (USPTO) and recorded with U.S. Customs and Border Protection (CBP). Pursuant to 15 U.S.C. 1124, the importation of articles that copy or simulate the trade name of a manufacturer or trader, or copy or simulate a trademark registered with the USPTO and recorded with CBP is prohibited. Likewise, under 17 U.S.C. 602 and 17 U.S.C. 603, the importation of articles that constitute an infringement of copyright in protected copyrighted works is prohibited. Both 15 U.S.C. 1124 and 17 U.S.C. 602, authorize the Secretary of the Treasury to prescribe by regulation for the recordation of trademarks, trade names and copyrights with CBP. Additional rulemaking authority in this regard is conferred by CBP's general rulemaking authority as found in 19 U.S.C. 1624.

CBP officers enforce these intellectual property rights at the border. The information that respondents must submit in order to seek the assistance of CBP to protect against infringing imports is specified for trademarks under 19 CFR 133.2 and 133.3, and the information to be submitted for copyrights is specified under 19 CFR 133.32 and 133.33. Trademark, trade name, and copyright owners seeking border enforcement of their intellectual property rights provide information through the recordation process in order to assist CBP officers in identifying violating articles at the border. Respondents may submit this information through the IPR e-Recordation Web site at *https://iprr.cbp.gov/*.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

Dated: April 18, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–09341 Filed 4–21–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–17]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; (This is not a toll-free number).

Dated: April 14, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/22/2016

Suitable/Available Properties

Building

Illinois

(MED) Outer Marker (OM) Facility
297 Spring Lake Drive
Itasca IL 60143
Landholding Agency: GSA
Property Number: 54201540006
Status: Surplus
GSA Number: 1–U–IL–805
Directions: Land Holding Agency: FAA; Disposal Agency: GSA
Comments: .441 acres; FAA tower site; contact GSA for more information.

Wisconsin

FM Repeater Station Install. #3
Sec. 26, T. 9N, R 6W
Lynxville WI 54626
Landholding Agency: GSA
Property Number: 54201540003
Status: Excess
GSA Number: 1–D–WI–622
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Social Security Office Bldg.
606 N. 9th Street
Sheboygan WI
Landholding Agency: GSA
Property Number: 54201540012
Status: Excess
GSA Number: 1–W–623–AA
Directions: WI0098ZZ
Comments: 37+yrs. old; 4,566 sq. ft.; office building; contact GSA for more information.

Land

TACAN Annex
6400 Block of Lake Rd.
Windsor WI 53598
Landholding Agency: GSA
Property Number: 54201320005
Status: Excess
GSA Number: 1–D–WI–611
Comments: 1 acre; moderate conditions.

Suitable/Unavailable Properties

Building

Alabama

SGT Jack Richburg USARCr
107 Kinston Highway
Opp AL 36467
Landholding Agency: GSA
Property Number: 54201520016
Status: Excess
GSA Number: 4–D–AL–0816AA
Directions: GSA—Disposal Agency; U.S. Army Reserve—Landholding Agency
Comments: 4,316 sq. ft.; administrative bldg.; office; built: 1967; sits on 4.53 acres; asbestos; remediation required; contact GSA for more information.

Alaska

FAA Housing
111 Henrichs Loop Road
Cordova AK 99754
Landholding Agency: GSA
Property Number: 54201440002
Status: Excess
GSA Number: 9–U–AK–0854
Directions: Disposal Agency; GSA; Land Holding Agency: Transportation.
Comments: 25+ yrs. old; 2,688 sq. ft.; 3 months vacant; residential good condition; may be difficult to move; contact GSA for more information.

Arizona

San Carlos Irrigation Project
BIA Old Main Office Bldg.
255 W. Roosevelt
Coolidge AZ 85128
Landholding Agency: GSA
Property Number: 54201440008
Status: Surplus
GSA Number: 9–I–AZ–1706–AA
Directions: Disposal Agency; GSA; Landholding Agency: Bureau of Indian Affairs.
Comments: 83+ yrs. old; 6,745 sq. ft.; 36mos. vacant; residential and commercial; brick structure; fair condition; asbestos & lead based paint; contact GSA for more information.

Arkansas

708 Prospect Avenue
708 Prospect Avenue
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201530006
Status: Surplus
GSA Number: 7–I–AR–0415–EG
Directions: Published in the FR 10/24/2014 under HUD property number 61201440001. Disposal Agency: GSA; Landholding Agency: Interior
Comments: off-site removal only; 100+ yrs. old; 13,086 sq. ft.; due to size removal will be difficult; vacant 17+ mos.; residential; fair condition; contact GSA for more information.

Connecticut

Shepard of the Sea Chapel & Community Center
231 Gungywamp Rd.
Groton CT 06340
Landholding Agency: GSA
Property Number: 54201510010
Status: Excess
GSA Number: CT–0933
Directions: Disposal Agency: GSA; Landholding Agency: Navy
Comments: 49+ yrs.-old; 28,777 sq. ft.; vacant 48+ mons.; wood & concrete; severe water damage; mold; sits on 13.5 acres; contact GSA for more information.

District of Columbia

49 L Street
49 L St. SE
Washington DC 20003
Landholding Agency: GSA
Property Number: 54201520003

Status: Excess
GSA Number: DC–496–1
Comments: 32,013 sq. ft.; storage; 67+ mons. vacant; poor condition; roof leaks; extensive structural repairs needed; cracks in walls; contamination; est. repair cost $4,000,000; contact GSA for more info.

Illinois

Peoria Radio Repeater Site
Between Spring Creek and Caterpillar Lane
Peoria IL
Landholding Agency: GSA
Property Number: 54201420008
Status: Excess
GSA Number: I–D–IL–806
Directions: Landholding Agency; COE; Disposal agency GSA
Comments: 8x12 equipment storage shed; fair conditions contact GSA for more information.

Louisiana

110 Willow Street
110 Willow Street
Homer LA 71040
Landholding Agency: GSA
Property Number: 54201540005
Status: Excess
GSA Number: 7–A–LA–0533–AA
Directions: Disposal Agency: GSA; Land Holding Agency: Interior
Comments: 54+ yrs. old; 1,754 sq. ft.; residential; vacant 12+ mos.; sits on 0.37 acres land; contact GSA for more information.

Maryland

Metro West
300 N. Green St.
Baltimore MD 21201
Landholding Agency: GSA
Property Number: 54201440004
Status: Excess
GSA Number: 4–G–MD–0624AA
Directions: 2 Federal office buildings totaling 1,085,741 sq. ft.
Comments: bldgs. located on 11 acres; 7 months vacant; good to fair conditions; includes garage w/410 spaces; coordinate access w/landholding agency's facilities management; contact GSA for more information.

Michigan

Nat'l Weather Svc Ofc
214 West 14th Ave.
Sault Ste. Marie MI
Landholding Agency: GSA
Property Number: 54200120010
Status: Excess
GSA Number: 1–C–MI–802
Comments: 2230 sq. ft., presence of asbestos, most recent use—office.

Former Newport Nike Missile Site D–58
800 East Newport Road
Newport MI 48166
Landholding Agency: GSA
Property Number: 54201530010
Status: Excess
GSA Number: 1–D–MI–0536
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: 70+ yrs. old; 3 buildings totaling 11,447 sq. ft.; sits on 36.35 acres; industrial; training site; extremely poor/hazardous condition; remediation required; contact GSA for more information.

Minnesota

Erving L. Peterson Memorial
USARC
1813 Industrial Blvd.
Fergus Falls MN 56537
Landholding Agency: GSA
Property Number: 54201520012
Status: Excess
GSA Number: 1–D–MN–0599–AA
Directions: Disposal Agency: GSA; Landholding Agency: US Army Reserve Command
Comments: the property consists of a 6 acre parcel of land w/an 18,537 sf admin. bldg. and 1,548 sf maintenance bldg.; contact GSA for more information.

FM Repeater Station Install.#3
Sec. 24, T. 105N, R 5W
Dresbach MN
Landholding Agency: GSA
Property Number: 54201540004
Status: Excess
GSA Number: 1–D–MN–598
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Missouri

Former NMCB15 Richards-Gedaur
RPSUID 212
600 Seabee Drive
Belton MO 64068
Landholding Agency: GSA
Property Number: 54201510004
Status: Surplus
GSA Number: 7–D–MO–0705
Directions: Disposal Agency: GSA; Landholding Agency: Navy
Comments: 10 bldgs. ranging from 960 to 4,980 sq. ft.; 12+ months vacant; some recent use includes admin./classroom/warehouse; 14.67 acres; asbestos/lead/mold may be present; contact GSA for more information.

Nebraska

Grand Island U.S. Post Office and Courthouse
203 West 2nd Street
Grand Island NE 68801
Landholding Agency: GSA
Property Number: 54201520018
Status: Surplus
GSA Number: 7G–NE–0519–AA
Directions: (RPUID)NE0018ZZ
Comments: 105+ yrs. old; 5,508 sq. ft.; office; good condition; asbestos; sits on 0.53 acres; listed on Nat. Reg. of Historic Place; need to contact property manager for aces.; contact GSA for more info.

Nevada

Alan Bible Federal Bldg.
600 S. Las Vegas Blvd.
Las Vegas, NV 89101
Landholding Agency: GSA
Property Number: 54201210009
Status: Excess
GSA Number: 9–G–NV–565
Comments: 81,247 sf.; current use: federal bldg.; extensive structural issues; needs major repairs; contact GSA for further details.

2 Buildings
Military Circle
Tonopah NV
Landholding Agency: GSA
Property Number: 54201240012
Status: Excess
GSA Number: 9–I–NV–514–AK
Directions: bldg. 102: 2,508 sf.; bldg. 103: 2,880 sf.
Comments: total sf. for both bldgs. 5,388; Admin.; vacant since 1998; sits on 0.747 acres; fair conditions; lead/asbestos present.

New Jersey

Portion of former Sievers-Sandberg U.S. Army Reserves Center (Camp Pedric)
Artillery Ave. at Garrison St.
Oldmans NJ 08067
Landholding Agency: GSA
Property Number: 54201320003
Status: Surplus
GSA Number: 1–D–NJ–0662–AB
Directions: On the north side of Rte 130, between Perkintown Road (Rte 644) and Pennsgove-Pedricktown Rd (Rte 642)
Comments: #171; mess hall bldg. #173; 14,282 total sf.; fair/poor conditions; asbestos/lead-based paint; potential legal constraints in accessing property; Contact GSA for more info.

Portion of Former Sievers-Sandberg U.S. Army Reserves Center—Tract 1
NW Side of Artillery Ave. at Rte. 130
Oldmans NJ 08067
Landholding Agency: GSA
Property Number: 54201320015
Status: Excess
GSA Number: 1–D–NJ–0662–AA
Directions: Previously reported under 54200740005 as suitable/available; 16 bldgs. usage varies: barracks/med./warehouses/garages; property is being parcelized.
Comments: 87,011 sf.; 10+ yrs. vacant fair/poor conditions; property may be landlocked; transferee may need to request access from Oldmans Township planning & zoning comm.; contact GSA for more info.

New York

Portion of GSA Binghamton "Hillcrest" Depot—Tract 1
1151 Hoyt Ave.
Fenton NY 13901
Landholding Agency: GSA
Property Number: 54201320017
Status: Surplus
GSA Number: 1–G–NY0760–AC
Directions: Previously reported on March 24, 2006 under 54200610016; this property includes 40 acres of land w/6 structures; property is being parcelized
Comments: warehouses range from approx. 16,347 sf.–172,830 sf.; admin. bldg. approx. 5,700 sf; guardhouse & butler bldg. sf. is unknown; 10 vacant; fair conditions; bldgs. locked; entry by appt. w/GSA.

A Scotia Depot
One Amsterdam Road
Scotia NY 12302
Landholding Agency: GSA
Property Number: 54201420003
Status: Surplus
GSA Number: 54201420003
Directions: Previously reported in 2006 but has been subdivided into smaller parcel.

Comments: 325,000 sq. ft.; storage; 120+ months vacant; poor conditions; holes in roof; contamination; access easement, contact GSA for more information.

Michael J. Dillon U.S. Memorial Courthouse
68 Court Street
Buffalo NY 14202
Landholding Agency: GSA
Property Number: 54201540010
Status: Excess
GSA Number: NY–0993–AA
Comments: 180950 gross sq. ft.; sits on 0.75 acres; 48+ months vacant; asbestos/LBP maybe present; eligible for Nat'l Register; subject to Historic Preserv. covenants; contact GSA for more info.

North Carolina

Johnson J. Hayes Federal Build
207 West Main Street
Wilkesboro NC 28697
Landholding Agency: GSA
Property Number: 54201540015
Status: Excess
GSA Number: NC–0735–AB
Directions: Take US Highway 421 North toward Wilkesboro/Boone; Take exit 286A; Turn left onto NC–16/NC–18/S Cherry St.; Continue to follow NC–18/S Cherry St.; Turn right onto NC–18/NC–268/W Main St. Basement—6,870 usable square feet (usf); First Floor—15,755 usf; Second Floor—16,118 usf; Total—38,743 usf
Comments: 47+ yrs. old; 38,743 Gross Square Feet.; office & courtroom; good condition; lease becomes month-to-month 02/2016; asbestos; contact GSA for more information.

Ohio

N. Appalachian Experimental Watershed Research Ctr.
28850 State Rte. 621
Coshocton OH 43824
Landholding Agency: GSA
Property Number: 54201420006
Status: Excess
GSA Number: 1–A–OH–849
Directions: Landholding Agency: Agriculture; Disposal Agency: GSA
Comments: 70,539 total sq. ft. for two bldgs.; storage/office; fair to poor conditions; lead-based paint; asbestos; PCBs; mold; remediation required; contact GSA for more information.

Oklahoma

Carl F. Albert FB/CH
McAlester
301 E. Carl Albert Parkway
McAlester OK 74501
Landholding Agency: GSA
Property Number: 54201540014
Status: Excess
GSA Number: 7–G–OK–0583–AA
Comments: 101+ yrs. old, 13,822 sq. ft.; office & courtroom; remediation of asbestos needed; roof in need of significant repairs; includes 0.49 acres; contact GSA for more information.

Oregon

FAA Non-Directional Beacon (NDB) sites on 0.92 acres
93924 Pitney Lane., Sec 6, T 16S R4W, W.M.
Junction City OR 97448
Landholding Agency: GSA
Property Number: 54201540009
Status: Unutilized
GSA Number: 9–OR–0806
Directions: Disposal Agency: GSA; Landholding Agency: FAA? Tax Lot number 16040600; Lane County zoning is a 5 AC min. for residential (RR5)
Comments: 25+ yrs. old; 50 sq. ft.; storage; 24+ mos. vacant; poor condition; 0.92 acres of land; contact GSA for more information.

South Carolina

Former U.S. Vegetable Lab
2875 Savannah Hwy
Charleston SC 29414
Landholding Agency: GSA
Property Number: 54201310001
Status: Excess
GSA Number: 4–A–SC–0609AA
Directions: headhouse w/3 greenhouses, storage bins
Comments: 6,400 sf.; lab; 11 yrs. vacant; w/in 100 yr. floodplain/floodway; however is contained; asbestos & lead based paint.

South Dakota

Lemmon Vehicle Storage Building
207 10th Street W.
Lemmon SD 57638
Landholding Agency: GSA
Property Number: 54201510009
Status: Surplus
GSA Number: 7–D–SD–0633–AA
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: 2,000 sq. ft.; vehicle storage barn; sits on 0.77 acres; contact GSA for more information.

Texas

3 Bldgs.; Former Hebbronville
1312 W. Harald Street
Hebbronville TX 78361
Landholding Agency: GSA
Property Number: 54201540001
Status: Surplus
GSA Number: 7–X–TX–0621–AB
Directions: Block Office Bldg.; Storage Bldg. & Wooden Storage Bldg.
Comments: 25–65 yrs. old; 5,834 gross sq. ft.; office; water damage on ceiling of office bldg.; contact GSA for more information.

Virginia

Building 641
216 Hunting Ave.
Hampton VA 23681
Landholding Agency: GSA
Property Number: 54201320006
Status: Excess
GSA Number: 4–Z–VA–0602–A1
Comments: 11,671 total sf.; office; fair/moderate conditions; existing Federal need.

Washington

Old Lynden Border Patrol Station; 8334 Guide Meridian Rd.
Lynden WA 98264
Landholding Agency: GSA
Property Number: 54201510003
Status: Excess
GSA Number: 9–Z–WA–1276
Directions: Disposal Agency: GSA; Landholding Agency: Dept. of Homeland Security
Comments: 50+ yrs.-old; 2,763 sq. ft.; vacant 18+ months; contact GSA for more information.

West Virginia

Naval Information Operations Center
133 Hedrick Drive
Sugar Grove WV 26815
Landholding Agency: GSA
Property Number: 54201430015
Status: Excess
GSA Number: 4–N–WV–0560
Directions: Land holding agency—Navy; Disposal Agency GSA
Comments: 118 Buildings; 445,134 sq. ft.; Navy base; until 09/15 military checkpoint; wetlands; contact GSA for more info.

Wisconsin

Canthook Lake—House/Storage
Canthook Lake
Iron River WI
Landholding Agency: GSA
Property Number: 54201530009
Status: Excess
GSA Number: 1–A–WI–0624–AA
Directions: Disposal Agency: GSA; Land Holding Agency: Agriculture
Comments: Off-site removal only; 70+ yrs. old; 4,004 sq. ft.; residential; average condition; contact GSA for more information.

FM Repeater Station Install. #3
Sec. 36, T. 25N, R 13W
Bay City WI
Landholding Agency: GSA
Property Number: 54201540002
Status: Excess
GSA Number: 1–D–WI–621
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Suitable/Unavailable Properties

Land

California

Delano Transmitting Station
1105 Melcher Rd.
Delano CA 93215
Landholding Agency: GSA
Property Number: 54201330005
Status: Excess
GSA Number: 9–X–CA–1671
Directions: Landholding Agency: Broadcasting Board of Governors Disposal Agency: GSA
Comments: 800 acres; mostly land and some bldgs.; unavailable due to Federal interest; transmitting station; vacant since 2007; access can be gain by appt. only; contact GSA for more info.

FAA Sacramento Middle Maker Site
1354 Palomar Circle
Sacramento CA 95831
Landholding Agency: GSA
Property Number: 54201530007
Status: Surplus
GSA Number: 9–U–CA–1707–AA
Directions: Disposal Agency: GSA; Landholding Agency: FAA
Comments: 0.29 Acres; contact GSA for more information.

Illinois

FAA Outer Marker
5549 Elizabeth Place

Rolling Meadows IL
Landholding Agency: GSA
Property Number: 54201430004
Status: Excess
GSA Number: I–U–IL–807
Directions: Landholding Agency; FAA; Disposal Agency; GSA
Comments: 9,640 sq. ft.; 12+ months vacant; outer marker to assist planes landing at O'Hare Airport; contact GSA for more information.

Nevada

Ditchrider Sorensen Road
2105 Sorensen Road
Fallon NV 89406
Landholding Agency: GSA
Property Number: 54201440006
Status: Surplus
GSA Number: 9–I–NV–0572–AB
Directions: Disposal Agency; GSA; Landholding Agency; Interior.
Comments: 2.73acres; formerly used us contractor/employee housing structure removal from the land 02/2011. Contact GSA for more information.

Nevada

Ditchrider South East Street
207 South East St.
Fallon NV 89406
Landholding Agency: GSA
Property Number: 54201440007
Status: Surplus
GSA Number: 9–I–NV–0572–AA
Directions: Disposal Agency; GSA; Land Holding Agency; Interior.
Comments: 0.32 acres; formerly used us contractor/employee housing structure demolished on land 02/2011. Contact GSA for more information.

USGS Elko Parcel
1701 North 5th Street
Elko NV 89801
Landholding Agency: GSA
Property Number: 54201540013
Status: Surplus
GSA Number: 9–I–NV–0465–AE
Directions: Previous "H Facility"
Comments: 0.90 acres; contact GSA for more information.

Ohio

Glenn Research Center—Plumbrook Station: Parcel #63
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: GSA
Property Number: 54201440012
Status: Excess
GSA Number: 1–Z–OH–0598–5–AE
Directions: Landholding Agency: NASA; Disposal Agency: GSA
Comments: 11.5 acres; contamination; various illegally dumped solid waste items (*e.g.*, lead acid batteries, oil filters & containers, & gas cylinders); contact GSA for more information

Oklahoma

FAA Oklahoma City Outer Marker
NW 3rd. Street
Oklahoma City OK 73127
Landholding Agency: GSA
Property Number: 54201530003
Status: Surplus
GSA Number: 7–U–OK–0582–AA
Directions: Disposal Agency: GSA; Land Holding Agency: DOT/Federal Aviation Admin.
Comments: 0.27 fee acres and a 0.08 acre assess easement.

Pennsylvania

FAA 0.65 Acres Vacant Land
Westminster Rd.
Wilkes-Barre PA 18702
Landholding Agency: GSA
Property Number: 54201520013
Status: Surplus
GSA Number: 4–U–PA–0828AA
Directions: GSA—Disposal Agency; FAA—Landholding Agency
Comments: Cleared area w/gravel; contact GSA for more information.

South Carolina

Marine Corps Reserve Training Center
2517 Vector Ave.
Goose Creek SC 29406
Landholding Agency: GSA
Property Number: 54201410009
Status: Excess
GSA Number: 4–N–SC–0630–AA
Directions: Landholding Agency: Navy; Disposal Agency: GSA
Comments: 5.59 acres; contact GSA for more information.

Formerly the FAA's D7 Remote Communications Link Receiver Fac.
Latitude N. 33.418194 & Longitude W. 80.13738
Eadytown SC
Landholding Agency: GSA
Property Number: 54201540011
Status: Surplus
GSA Number: 4–U–SC–0633–AA
Directions: Landholding Agency: Transportation; Disposal Agency: GSA
Comments: 5.5 acres; Remote Communications Link Receiver Facility; contact GSA for more information.

Tennessee

Parcel 279.01
Northwest corner of Administration Rd. & Laboratory Rd
Oak Ridge TN 37830
Landholding Agency: GSA
Property Number: 54201520014
Status: Surplus
GSA Number: 4–B–TN–0664–AD
Directions: Disposal Agency; Energy—Landholding Agency
Comments: Corner lot w/out an est. driveway/curb; transferee will need to contact the City of Oak Ridge for ingress/egress requirements (865–425–3581; *www.oakridgetn.gov*); contact GSA for more information.

Parcel ED–3 E and W (168.30 ± acres)
South Side of Oak Ridge Turnpike
Oak Ridge TN 37763
Landholding Agency: GSA
Property Number: 54201520015
Status: Surplus
GSA Number: 4–B–TN–0664–AG
Directions: GSA—Disposal Agency; Energy—Landholding Agency; (State Rte. 58)
Comments: Accessibility/usage subjected to Federal, state, & local laws including but not limited to historic preservation, floodplains, wetlands, endangered species, Nat'l EPA; contact GSA for more information.

Parcels ED–13, 3A, 16
Portions of D–8 & ED–4
N. Side of Oak Ridge Turnpike (State Rte. 58)
Oak Ridge TN 37763
Landholding Agency: GSA
Property Number: 54201530001
Status: Surplus
GSA Number: 4–B–TN–0664–AF
Directions: Energy: Landholding Agency; GSA: Disposal Agency
Comments: 168 ± acres; legal constraints: ingress/egress utility easement; groundwater constraints; contact GSA for more information.

Texas

Brownwood Vacant Land and Parcel
Morris Sheppard Dr. & Memorial Park
Brownwood TX 78601
Landholding Agency: GSA
Property Number: 54201540008
Status: Surplus
GSA Number: 7–D–TX–1163–AA
Directions: Landholding Agency: COE; Disposal Agency: GSA
Comments: 3.48 acres; contact GSA for more information

West Virginia

Former AL1–RCLR Tower Site
2146 Orleans Rd.,
Great Cacapon WV 25422
Landholding Agency: GSA
Property Number: 54201530002
Status: Surplus
GSA Number: 4–U–WV–0561AA
Directions: Direction: Disposal Agency: GSA; Landholding Agency: Federal Aviation Administration
Comments: 9.69 acres; located on ridgetop.

[FR Doc. 2016–09050 Filed 4–21–16; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: May 2, 2016, 9:00 a.m.–1:00 p.m.

PLACE: Inter-American Foundation, 1331 Pennsylvania Ave. NW., Suite 1200 North Building, Washington, DC 20004.

STATUS: Meeting of the Board of Directors, Open to the Public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the November 09, 2015, Meeting of the Board of Directors & Advisory Council
- Welcome to new Board Members
- Management Report
- Processing Board Minutes
- IAF's 50th Anniversary
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Paul Zimmerman, General Counsel (202) 683–7118.

Paul Zimmerman,
General Counsel.

[FR Doc. 2016–09493 Filed 4–20–16; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0064; FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before May 23, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0064.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0064; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: University of Minnesota, Minneapolis, MN; PRT–84795B

The applicant requests a permit to import biological samples from salvaged specimens of chimpanzee (*Pan troglodytes*) for the purpose of scientific research.

Applicant: Auburn University, Auburn, AL; PRT–81432B

The applicant requests a permit to import biological samples from captive-held Asian elephants (*Elephas maximus*) from Canada for the purpose of scientific research.

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI; PRT–85795B

The applicant requests a permit to import one female captive-bred snow leopard (*Uncia uncia*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: New York University, New York, NY; PRT–80238B

The applicant requests a permit to import biological samples from captive-bred and captive held mangabey (*Cercocebus torquatus*) and red-eared guenon (*Cercopithecus erythrotis*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: University of Florida, Florida Museum of Natural History, Gainesville, FL; PRT–677336

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned in the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wildlife Conservation Society, New York, NY; PRT–231585

The applicant requests renewal of their permit to export captive-bred/captive-hatched Kihansi spray toads (*Nectophrynoides asperginis*) to the Government of the United Republic of Tanzania—C/O the University of Dar es Salaam, Dar es Salaam, Tanzania, for the purpose of enhancement of the species through reintroduction into the wild. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Sunset Zoological park, Manhattan, KS; PRT–679476

The applicant requests a renewal of his captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Cheetah (*Acinonyx jubatus*), maned wolf (*Chrysocyon brachyurus*), red-crowned crane (*Grus japonensis*), lar gibbon (*Hylobates lar*), Edward's pheasant (*Lophura edwardsi*), Parma wallaby (*Macropus parma*), Amur leopard (*Panthera pardus orientalis*), Malayan tiger (*Panthera tigris jacksoni*), Puerto Rican crested toads (*Peltophryne lemur*), and common chimpanzee (*Pan troglodytes*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: West Coast Game Park, Bandon, OR; PRT–667821

The applicant requests an amendment and renewal of his captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: African lion (*Panthera leo*), Leopard (*Panthera pardus*), snow leopards (*Uncia uncia*), and chimpanzees (*Pan troglodytes*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: White Oak Conservation Holdings, LLC, Yulee, FL; PRT–03134B

The applicant requests an amendment to his captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Blue-billed curassow (*Crax alberti*), white rhinoceros (*Ceratotherium simum*), and Andean Condor (*Vultur gryphus*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Andy Nguyen, Huntington Beach, CA; PRT–79469A

The applicant requests an amendment to his captive-bred wildlife registration under 50 CFR 17.21(g) to add Galapagos tortoise (*Chelonoidis nigra*) to enhance the species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–09357 Filed 4–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Amendment to Tribal-State Class III Gaming Compact in the State of South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Oglala Sioux Tribe and State of South Dakota entered into an amendment to an existing Tribal-State compact governing Class III gaming. This notice announces approval of the amendment.

DATES: Effective April 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Section 11 of the Indian Gaming Regulatory Act (IGRA) requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts that are for the purpose of engaging in Class III gaming activities on Indian lands. *See* Public Law 100–497, 25 U.S.C. 2701 *et seq.* All Tribal-State Class III compacts, including amendments, are subject to review and approval by the Secretary under 25 CFR 293.4. The amendment expands the scope of allowable games to include craps, keno and roulette. The amendment is approved. *See* 25 U.S.C. 2710(d)(8)(A).

Dated: April 13, 2016.

Lawrence S. Roberts,

Assistant Secretary—Indian Affairs.

[FR Doc. 2016–09328 Filed 4–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X LLIDB00100 LF1000000.HT0000 LXSS020D0000 241A 4500085770]

Temporary Road Closure on Public Lands in Owyhee County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Celebration Fire 2-year temporary road closure is in effect on public lands administered by the Morley Nelson Snake River Birds of Prey National Conservation Area (NCA). One mile of road will be closed to motorized vehicle traffic to protect sensitive resources.

DATES: This closure will be in effect on April 22, 2016 and will remain in effect until April 23, 2018, unless otherwise rescinded or modified by the authorized officer or designated Federal officer.

FOR FURTHER INFORMATION CONTACT: Tate Fischer, Four Rivers Field Office Manager at 3948 Development Ave., Boise, Idaho, 83705, via email at *tfischer@blm.gov* or phone 208–384–3300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Fischer. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with Mr. Fischer. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Celebration Fire temporary closure affects a 1-mile road segment that crosses public lands located in Owyhee County, Idaho, approximately 5 miles northeast of Murphy, which burned June 6–9, 2015. The road affected by this temporary closure is found in:

Boise Meridian, Idaho

T. 2 S., R. 1 W.,
Sections 5 and 6.

The road is shown on the map named, "Celebration Fire Temporary Road Closure." The Celebration Fire temporary road closure, which affects approximately 1 mile of road, is necessary to protect sensitive resources, which, with the removal of vegetation, are now susceptible to damage. The Snake River Birds of Prey National Conservation Area (NCA) Resource Management Plan designated the area impacted by the fire as "Limited to existing roads and trails." The temporary road closure will remain effective until April 23, 2018, unless otherwise rescinded or modified by the authorized officer or designated Federal officer. The BLM will post temporary closure signs at the main entry point of the closed road. This notice, maps of the affected area, and associated documents will also be posted in the Boise District BLM Office, 3948 Development Avenue, Boise, Idaho, 83705, and the Owyhee Field Office, 20 First Avenue West, Marsing, Idaho, 83639.

National Environmental Policy Act (NEPA)

The effects of the temporary road closure are described in the Boise Normal Fire Rehabilitation and Stabilization Environmental Assessment (#ID–090–2004–050–EA), and the specific proposal was analyzed in Determination of NEPA Adequacy, (#DOI–BLM–ID–B011–2015–0006–DNA), signed on September 16, 2015. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section listed above.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rule within the Celebration Fire Temporary Road Closure order:

Motorized vehicles must not be used on the closed road segment.

Exemptions: The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and entities with valid existing use authorizations, *i.e.* rights-of-way, leases and permits.

Penalties: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Idaho law.

Authority: 43 CFR 8364.1.

Tate Fischer,

BLM Four Rivers Field Manager.

[FR Doc. 2016–09441 Filed 4–21–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0009]

Outer Continental Shelf (OCS), Gulf of Mexico, Oil and Gas Lease Sales for 2017–2022 MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability (NOA) of a Draft Environmental Impact Statement (EIS).

SUMMARY: BOEM is announcing the availability of a Draft EIS for Gulf of Mexico OCS oil and gas lease sales tentatively scheduled from 2017–2022 (2017–2022 Gulf of Mexico Multisale Draft EIS or Draft Environmental Impact Statement). BOEM proposes to conduct 10 region-wide Gulf of Mexico oil and gas lease sales during this five-year period that are tentatively scheduled in the Proposed 2017–2022 OCS Oil and Gas Leasing Program (Five-Year Program). The lease sales proposed in the Gulf of Mexico in the Five-Year Program are region-wide lease sales comprised of the Western and Central Planning Areas, and a small portion of the Eastern Planning Area this is not subject to Congressional moratorium. As Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4), the 2017–2022 Gulf of Mexico Multisale Draft EIS provides the environmental analyses necessary for all 10 region-wide Gulf of Mexico oil and gas lease sales tentatively scheduled in the Five-Year Program. As a decision on whether and how to proceed with each proposed lease sale in the Five-Year Program is made individually, the proposed action considered in the 2017–2022 Gulf of Mexico Multisale Draft EIS is comprised of a single region-wide sale in the Gulf of Mexico. The Draft EIS provides a discussion of the potential significant impacts of a proposed action and an analysis of reasonable alternatives to the proposed action. This NOA also serves to announce the beginning of the public comment period for the Draft EIS.

The Draft EIS and associated information are available on BOEM's Web site at *http://www.boem.gov/nepaprocess/*. BOEM will primarily distribute digital copies of the Draft EIS on compact discs. You may request a paper copy or the location of a library with a digital copy of the Draft EIS from the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (GM 250C), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF).

DATES: Comments should be submitted no later than June 6, 2016.

FOR FURTHER INFORMATION CONTACT: For more information on the Draft EIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Office of Environment (GM 623E), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by email at *multisaleeis2017–2022@boem.gov*. You may also contact Mr. Goeke by telephone at 504–736–3233.

SUPPLEMENTARY INFORMATION: Federal, State, Tribal, and local governments and/or agencies and the public may submit written comments on this Draft EIS through the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the field entitled, "Enter Keyword or ID," enter "Oil and Gas Lease Sales: Gulf of Mexico, Outer Continental Shelf; 2017–2022 Gulf of Mexico Multisale Draft EIS" (Note: It is important to include the quotation marks in your search terms.), and then click "search." Follow the instructions to submit public comments and view supporting and related materials available for this notice;

2. U.S. mail in an envelope labeled "Comments for the 2017–2022 Gulf of Mexico Multisale Draft EIS" and addressed to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be postmarked by the last day of the comment period to be considered. This date is June 6, 2016; or

3. Via email to *multisaleeis2017–2022@boem.gov.*

BOEM will hold public meetings to obtain comments regarding the Draft Environmental Impact Statement. The meetings are scheduled as follows:

- Beaumont, Texas: Monday, May 9, 2016, Holiday Inn Hotel and Suites Beaumont—Plaza, 3950 I–10 South at Walden Road, Beaumont, Texas 77705, one meeting beginning at 4:30 p.m. CDT;

New Orleans, Louisiana: Thursday, May 12, 2016, Sheraton Metairie—New Orleans Hotel, 4 Gallaria Boulevard, Metairie, Louisiana 70001, one meeting beginning at 1:00 p.m. CDT;

- Panama City, Florida: Tuesday, May 17, 2016, Bay Point Golf Resort and Spa, 4114 Jan Cooley Drive, Panama City Beach, Florida 32408, one meeting beginning at 4:30 p.m. CDT;
- Mobile, Alabama: Wednesday, May 18, 2016, Renaissance Mobile Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama 36602, one meeting beginning at 4:30 p.m. CDT; and
- Gulfport, Mississippi: Thursday, May 19, 2016, Courtyard by Marriott, Gulfport Beachfront MS Hotel, 1600 East Beach Boulevard, Gulfport, Mississippi 39501, one meeting beginning at 4:30 p.m. CDT.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This NOA of a Draft EIS is in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and is published pursuant to 43 CFR 46.415.

Dated: April 15, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–09420 Filed 4–21–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0120

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing that the information collection request for the Nomination and Request for Payment Form for OSMRE's Technical Training Courses, has been submitted to the Office of Management and Budget (OMB) for review and approval. This information collection activity was previously approved by OMB, and assigned control number 1029–0120. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 23, 2016, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0120 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSMRE has submitted a request to OMB to renew its approval of the collection of information found in its Nomination and Request for Payment Form for OSM Technical Training Courses. OSMRE is requesting a 3-year term of approval for this collection. This collection is required to obtain or retain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0120. The OMB control number and expiration date appear on the form.

As required by 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on December 24, 2015 (80 FR 80385). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Nomination and Request for Payment Form for OSM Technical Training Courses.

OMB Control Number: 1029–0120.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSMRE's technical training mission, and to estimate costs to the training program.

Bureau Form Numbers: OSM–105.

Frequency of Collection: Once per training course.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 687 responses.

Total Annual Burden Hours: 5 minutes per response, or 57 total hours.

Obligation to Respond: Required in order to obtain or retain benefits.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to OMB control number 1029–0120 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 19, 2016.

Harry J. Payne,

Chief, Division of Regulatory Support.

[FR Doc. 2016–09393 Filed 4–21–16; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (First Review) and 731–TA–1043–1045 (Second Review)]

Polyethylene Retail Carrier Bags From China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam; Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930, that revocation of the countervailing duty order on polyethylene retail carrier bags from Vietnam and revocation of the antidumping duty orders on polyethylene retail carrier bags from China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted these reviews on April 1, 2015 (80 FR 17490) and determined on July 6, 2015 that it would conduct full reviews (80 FR 43118, July 21, 2015). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 15, 2015 (80 FR 62110). The hearing was held in Washington, DC, on February 18, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 18, 2016. The views of the Commission are contained in USITC Publication 4605 (April 2016), entitled *Polyethylene Retail Carrier Bags from China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam: Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (First Review) and 731–TA–1043–1045 (Second Review).*

By order of the Commission.

Issued: April 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09338 Filed 4–21–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–939]

Certain Three-Dimensional Cinema Systems and Components Thereof; Commission Determination To Extend the Target Date; Schedule for Filing Written Submissions on Certain Issues

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation until June 1, 2016. The Commission also requests briefing from the parties on the issues indicated in this notice.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2014, based on a complaint filed by RealD, Inc. of Beverly Hills, California ("RealD"). 79 FR 73902–03 (Dec. 12, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain three-dimensional cinema systems, and components thereof, that infringe certain claims of U.S. Patent Nos. 7,905,602 ("the '602 patent"), 7,857,455 ("the '455 patent"), 7,959,296 ("the '296 patent"), and 8,220,934 ("the '934 patent"). *Id.* at 73902. The notice of investigation named as respondents MasterImage 3D, Inc. of Sherman Oaks, California, and MasterImage 3D Asia, LLC of Seoul, Republic of Korea. *Id.* at 73903. The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On July 23, 2015, the Commission later terminated the investigation as to various of the asserted claims and the '602 patent in its entirety. Notice (July 23, 2015) (determining not to review Order No. 6 (July 2, 2015)); Notice (Aug. 20, 2015) (determining not to review Order No. 7 (Aug. 3, 2015)).

On September 25, 2015, the Commission determined on summary determination that RealD satisfied the economic prong of the domestic industry requirement through its significant investment in plant, significant investment in labor, and substantial investment in engineering, research, and development. Notice (Sept. 25, 2015) (determining to review in part Order No. 9 (Aug. 20, 2015)). The Commission, however, reversed the presiding administrative law judge's ("ALJ") summary determination with respect to RealD's investment in equipment. *Id.*

On December 16, 2015, the ALJ issued a final ID finding a violation of section 337 with respect to the remaining asserted patents. The ALJ found that the asserted claims of each patent are infringed and not invalid or unenforceable. The ALJ found that the technical prong of the domestic industry requirement was satisfied for the asserted patents. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending that a limited exclusion order and cease and desist orders should issue and that a bond of 100 percent should be imposed during the period of presidential review.

On December 29, 2015, MasterImage filed a petition for review challenging various findings in the final ID. On January 6, 2016, RealD filed a response to MasterImage's petition. On January 15, 2016, and January 19, 2016, MasterImage and RealD respectively filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public in response to the Commission notice issued on December 22, 2015. 80 FR 80795 (Dec. 28, 2015).

On February 16, 2016, the Commission determined to review the final ID in part and requested additional briefing from the parties on certain issues. 81 FR at 8744–45. The Commission also solicited briefing from the parties and the public on the issues of remedy, the public interest, and bonding. *Id.*

On March 1, 2016, the parties filed initial written submissions addressing the Commission's questions and the issues of remedy, the public interest, and bonding. On March 11, 2016, the parties filed response briefs. No comments were received from the public.

On April 14, 2016, MasterImage filed a letter, notifying the Commission that, on that same day, the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office ("PTAB") issued a Final Written Decision finding claims 1, 6–10, and 18–20 of the '934 patent unpatentable. *See* MasterImage Ltr. (Apr. 14, 2016).

The Commission has determined to extend the target date for completion of the investigation until June 1, 2016.

The Commission requests a response to the following question only:

1. What is the effect of the PTAB's Final Written Decision on the Commission's final determination, including any underlying findings, in this investigation? Please include in your response any effect on the issuance of remedial orders with respect to the asserted claims of the '455 and '296 patents and claim 11 of the '934 patent.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Initial written submissions must be filed no later than close of business on April 26, 2016. Initial written submissions by the parties shall be no more than 20 pages, excluding any attachments or exhibits. Reply submissions must be filed no later than the close of business on May 3, 2016. Reply submissions by the parties shall be no more than 20 pages, excluding any attachments or exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337–TA–939") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09339 Filed 4–21–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1313 (Preliminary)]

1,1,1,2-Tetrafluoroethane (R-134a) From China; Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of 1,1,1,2-Tetrafluoroethane (R-134a) from China, provided for in subheading 2903.39.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value ("LTFV").

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce ('Commerce") of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On March 3, 2016, the American HFC Coalition and its individual members (Amtrol, Inc., West Warwick, Rhode Island; Arkema, Inc., King of Prussia, Pennsylvania; The Chemours Company FC LLC, Wilmington, Delaware; Honeywell International Inc., Morristown, New Jersey; Hudson Technologies, Pearl River, New York; Mexichem Fluor Inc., St. Gabriel, Louisiana; and Worthington Industries, Inc., Columbus, Ohio) and District Lodge 154 of the International Association of Machinists and Aerospace Workers filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of 1,1,1,2-Tetrafluoroethane (R-134a) from China. Accordingly, effective March 3, 2016, the Commission, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), instituted antidumping duty investigation No. 731–TA–1313 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 9, 2016 (81 FR 12523). The conference was held in Washington, DC, on March 24, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

The Commission made this determination pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on April 18, 2016. The views of the Commission are contained in USITC Publication 4806 (April 2016), entitled *1,1,1,2-Tetrafluoroethane (R-134a) from China: Investigation No. 731–TA–1313 (Preliminary).*

By order of the Commission.

Issued: April 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09337 Filed 4–21–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Youthful Offender Grants Management Information System, (OMB Control No. 1205–0513) Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the revision to the information collection request (ICR) titled, "Youthful Offender Grants Management Information System, (OMB Control No. 1205–0513)." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

DATES: Consideration will be given to all written comments received by June 21, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Ann Leonetti by telephone at 202–693–2746, TTY 1–877–889–5627, (these are not toll-free numbers) or by email at *leonetti.ann@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Attention: Ann Leonetti, Room N–4508, 200 Constitution Avenue NW., Washington, DC 20210; by email: *leonetti.ann@dol.gov;* or by Fax 202–693–3113.

FOR FURTHER INFORMATION CONTACT: Ann Leonetti by telephone at 202–693–2746, TTY 1–877–889–5627, (these are not toll-free numbers) or by email at *leonetti.ann@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Each year, the Department of Labor/Employment and Training Administration is appropriated funds for youthful offender demonstration projects. The Department of Labor uses these funds for a variety of multi-site demonstrations aimed at developing model programs for serving young offenders. The Department expects over the next few years to award 28 new Youthful Offender grants in various sets of demonstrations each year for two years of operation and up to one year of follow-up services and post-placement data collection. In any given year this will result in 28 grants in their first year of operation, 28 grants in their second year of operation, and 28 grants providing follow-up services and tracking post-placement outcomes, for a total of 84 grants collecting data each year.

This data collection request is to permit the Department of Labor to continue with revisions a management information system for these various sets of grantees. This request includes the collection of data by grantees on participant characteristics, services provided, and participant outcomes; the quarterly progress report submitted by grantees, the quarterly narrative report, and the annual recidivism report. This request continues a reporting and recordkeeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold Youthful Offender grantees appropriately accountable for the Federal funds they receive, including performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

Revisions include adding questions on immigration status, welfare receipt, mental health treatment, and child support obligations to the data collected at intake; inserting several additional outcomes and clarifying some of the reporting items in the quarterly progress report; and broadening the recidivism survey to cover young adult offenders as well as juvenile offenders and to allow it to be filled out by the adult criminal justice system for young adult offenders. This request also adds the quarterly narrative report to be submitted by grantees. Burden hours for the quarterly narrative report were included in the supporting statement three years ago, but the report was left out of the final approval. This request also adds burden hours not included in the request three years ago for the time spent by grantees generating, reviewing, and correcting errors in the quarterly progress reports; increases the average burden to participants for the collection of intake data; and reduces the average burden hours from 30 to 16 for grantees to complete the quarterly narrative reports to make it consistent with the average hours approved for the quarterly narrative reports of similar Division of Youth services programs.

Section 185 of the Workforce Innovation and Opportunity Act authorizes the collection of data from grantees on the demographic characteristics of participants, activities provided, and program outcomes. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control No. 1205–0513. Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension with Revisions.

Title of Collection: Youthful Offender Grants Management Information System.

Forms: Quarterly Progress Report, Quarterly Narrative Report, Recidivism Report.

OMB Control Number: 1205–0513.

Affected Public: State, Local, and Tribal Government Agencies; Private Sector: Not-for-Profit Institutions; State and Local Juvenile and Adult Justice Agencies; State and Local Workforce Development Agencies; Program Participants.

Data collection activity	Number of respondents	Frequency	Total responses	Average time per response (hours)	Burden hours
Participant Records, Burden on Grantees	84 Grantees	Ongoing	12,000	1.6	19,200
Participant Records, Burden on Participants	12,000 Participants	Ongoing	12,000	.5	6,000
Performance Report	84 Grantees	Quarterly	336	16	5,376
Narrative Report	84 Grantees	Quarterly	336	16	5,376
Recidivism Report	84 Justice Agencies	Annual	12,000	.5	6,000
Total	12,168*	Varies	36,672	Varies	41,952

* Unduplicated Count.

Portia Wu,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2016–09382 Filed 4–21–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Program Reporting and Performance Standards System for Indian and Native American Programs Under Title I, Section 166 of the Workforce Innovation and Opportunity Act (WIOA), Extension With Revision; OMB Control No. 1205–0422

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This notice utilizes standard clearance procedures in accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.12.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 21, 2016.

ADDRESSES: Submit written comments to U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, attn: Athena R. Brown, Room N–4209, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3737 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Each Indian and Native American (INA) grantee receiving WIOA, Section 166 funds (non-Pub. L. 102–477 grantees) to administer the Comprehensive Services Program (CSP) is required to submit a CSP Report (ETA Form 9084) on a quarterly basis. Grantees receiving WIOA Section 166 Supplemental Youth Services Program (SYSP) funds (non-Pub. L. 102–477 grantees) currently submit a SYSP Report (ETA Form 9085) semi-annually. This request is to extend the existing ETA Form 9084 and 9085 report submitted each quarter, or semi-annually, by INA grantees. The only revision to the ETA 9085 is to increase the age range for youth to twenty-four years old per the WIOA.

ETA requires the collection and reporting of data on eligible persons served under the WIOA, Section 166 CSP and SYSP to assess the performance and delivery of services. The current ETA forms 9084 and 9085 expire on September 30, 2016. This request is to extend the instructions and forms currently used until such time when the WIOA Final Rule and policy guidance are issued. Subsequently, a revised Information Collection Request will be required to comply with the Final Rule. In the interim, ETA will continue to administer the INA programs under the Workforce Investment Act (WIA) Final Rule.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revision.

Title: "Program Reporting and Performance Standards System for Indian and Native American Programs Under Title I, Section 166 of the Workforce Innovation and Opportunity Act."

OMB Number: 1205–0422.

Affected Public: Tribal governments and non-profits.

Total Respondents: 123 and 81.

Frequency of Collection: quarterly (CSP) and semi-annually (SYSP).

Total Responses: 327.

Average Time in Hours per Respondent: 26.5 for the ETA–9084, 24 for the ETA–9085, and 2.5 for the SPIR.

Estimated Total Burden Hours: 19,596.

Total Annual Costs Burden: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 13th day of March 2016.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–09381 Filed 4–21–16; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Report on Occupational Employment and Wages." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 21, 2016.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Employment Statistics (OES) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current occupational employment and wages. OES survey data assist in the development of employment and training programs established by the 1998 Workforce Investment Act (WIA) and further reinforced by the Workforce Innovation and Opportunity Act (WIOA) and the Perkins Vocational Education Act of 1998.

The OES program operates a periodic mail survey of a sample of non-farm establishments conducted by all fifty States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Over three-year periods, data on occupational employment and wages are collected by industry at the four- and five-digit North American Industry Classification System (NAICS) levels. The Department of Labor uses OES data in the administration of the Foreign Labor Certification process under the Immigration Act of 1990.

II. Current Action

Office of Management and Budget clearance is being sought for the Occupational Employment Statistics (OES) program. Occupational employment data obtained by the OES survey are used to develop information regarding current and projected employment needs and job opportunities. These data assist in the development of State vocational education plans. OES wage data provide a significant source of information to support a number of different Federal, State, and local efforts.

As part of an ongoing effort to reduce respondent burden, OES has several electronic submission options which are available to respondents. Respondents have the ability to submit data by email, or fillable online forms. In many cases, a respondent can submit existing payroll records and would not need to submit a survey form.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Report on Occupational Employment and Wages.

OMB Number: 1220–0042.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Total Respondents: 297,521.

Frequency: Semi-annually.

Total Responses: 297,521.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 148,760.

Total Burden Cost (capital/startup): $00.00.

Total Burden Cost (operating/maintenance): $00.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of April, 2016.

Kimberly D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–09380 Filed 4–21–16; 8:45 am]

BILLING CODE 4510–24–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection; Request for Public Comments

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on a revision of an approved information form (SF–SAC) that is used to report audit results, audit findings, and questioned costs as required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501, *et seq.*) and 2 CFR part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

The first notice of this information collection request, as required by the Paperwork Reduction act, was published in the **Federal Register** on December 9, 2015 (80 FR 76581). The proposed changes are to revise some existing data elements in the form and add other data elements that would make it easier for the Federal agencies to identify the types of audit findings reported in the audits performed under the Single Audit Act. The current Form SF–SAC was designed for audit periods ending in 2013, 2014 and 2015 (for FY 2015 for audit periods beginning before December 26, 2014). The proposed revised Form SF–SAC is designed for audit periods ending in 2015, 2016 and 2017 (for FY 2015 audit periods beginning on or after December 26, 2014). The detail proposed changes, the proposed format and discussion of the public comments and responses are described on OMB Web site at: *http://www.whitehouse.gov/omb/grants_forms/.* To help respondents make sure they complete the correct version of the Form SF–SAC and to prevent them from filling out the Form SF–SAC when they are not required to do so, the Federal Audit Clearinghouse (FAC) data collection system will ask if the auditee is a state, local government, Indian Tribe, institution of higher education (IHE), or nonprofit organization, the auditee's fiscal period begin and end dates, is the auditee U.S. based, and did the auditee met the expenditure threshold. For fiscal years starting on or after December 26, 2014, the FAC also plans to allow Non-Federal entities who did not meet the threshold requiring submission of a Single Audit report to voluntarily notify the FAC that they did not meet the reporting threshold. This information helps the Federal agencies in the review of applicants that fall below the reporting requirements. The FAC plans to put this information on their Web site. The FAC intends to continue collection of late submissions and revisions from auditees on the two previous versions of the Form SF–SAC. The FAC may suspend the collection of late submissions on previous versions of the Form SF–SAC after five years.

Pilot Project To Reduce Duplication Via Single Audit Concept Form

In developing the current form, OMB has identified some potential duplication in the current process for reporting the SF–SAC and the Schedule of Expenditure for Financial Assistance (SEFA). Currently, awardees subject to Single Audit reporting create a Schedule of Expenditures of Federal Awards (SEFA) and use it to complete their SF–FAC through the Federal Audit Clearing (FAC) House. The SEFA and the SF–SAC contain similar data which is submitted to FAC in two formats.

Therefore, as a part of the DATA Act Section 5 Pilot to Reduce Recipient Reporting Burden, OMB and the Department of Health and Humand Services (DATA Act Program Management Office (DAP)) would like to test a more streamlined process for submitting the SEFA. Under this test, participants would be provided the opportunity to use an expanded SF–SAC Concept Form which includes a additional information related to the SEFA notes . The FAC would then generate a customizable SEFA that a recipient could download, modify, and include in their Annual Single Audit Report.

DAP has developed a detailed draft sampling process to help identify and recruit potential participants for the Test Model. DAP has determined that it will target a minimum of 42 participants per Test Model. In order to achieve this goal, DAP will perform targeted outreach to a sample of Federal award recipients from the USAspending.gov database for FY15 reflecting the diversity of the recipient community. DAP target recipients who meet the Single Audit criterion of expending $750,000 or more annually in federal funds. Recognizing that PRA requires that OMB approve federally sponsored data collection of the public, DAP will reach out to an identified sample of 702 recipients with information on the Section 5 Grants Pilot and a Test Model participation form to request information from recipients after receiving OMB PRA clearance. DAP expects to receive PRA clearance for this data collection in late winter/early spring 2016. Interested participants will be requested to read brief descriptions of the Test Models and indicate all Test Models in which they would like to participate. DAP will continuously monitor recipient responses, feedback, and preferences. DAP will assign interested recipients to Test Models based on indicated interest while maintaining diversity amongst recipients for each Test Model. DAP will follow up and engage with recipients as necessary in an effort to achieve the stated goal of 42 participants per Test Model. DAP is also collecting contact information for recipients interested in Test Model participation through voluntary self-nomination and third-party recommendations.

The concept form is included under this notice and will be used for the pilot project. We are *not requesting comments on this concept form during this 30 day period,* but the comments will be collected as part of the pilot project conducted by DAP. The concept form is also displayed on OMB Web site at *http://www.whitehouse.gov/omb/grants_forms/.*

DATES: Submit comments on or before May 23, 2016. Late comments will be considered to the extent practicable.

ADDRESSES: Electronic mail comments may be submitted to: Gilbert Tran at *hai_m._tran@omb.eop.gov.* Please include "Form SF–SAC 2016 Comments—30 Days PRA" in the subject line and the full body of your comments in the text of the electronic message, not as an attachment. Please include your name, title, organization, postal address, telephone number and email address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3052. The proposed revisions to the Information Collection Form, Form SF–SAC can be obtained by contacting the Office of Federal Financial Management as indicated above or by download from the OMB Grants Management home page on the Internet at ***http://www.whitehouse.gov/omb/grants_forms/***.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Revision of a currently approved collection

Respondents: States, local governments, Indian tribes, institutions of higher education (IHE), or nonprofit organizations (Non-Federal entities) and their auditors.

Estimated Number of Respondents: 72,600 (36,300 from auditors and 36,300 from auditees). Raising the threshold to $750,000 is estimated to lower the number of respondents by 13,400 (6,700 from auditors and 6,700 from auditees). The respondents' information is collected by the Federal Audit Clearinghouse (maintained by the U.S. Bureau of the Census).

Estimated Time per Respondent: 100 hours for each of 400 large respondents and 30 hours for each of 72,200 small respondents for estimated annual burden hours of 2,206,000.

Estimated Number of Responses per Respondent: One response for each auditee and one response by the auditor for each single audit they perform.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–SAC to create a government-wide database, which contains information on audit results. This database is publicly accessible on the Internet at *https://harvester.census.gov/facdissem/main.aspx*. The Uniform Guidance indicates that the FAC is authorized to make the reporting package and the Form SF–SAC publicly available on a Web site. There is an exception for Indian Tribes and Tribal Organizations. An auditee that is an Indian Tribe or a Tribal Organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site. The data collected by the FAC is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the Government Accountability Office, OMB and the general public for management of and information about Federal awards and the results of audits. Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Mark Reger,

Deputy Controller.

[FR Doc. 2016–09413 Filed 4–21–16; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Thursday, May 5, 2016, 1:00 p.m.–4:00 p.m. (Eastern Daylight Time), and on Friday, May 6, 2016, 9:00 a.m.–4:30 p.m. (Eastern Daylight Time) in Washington, DC.

PLACE: The meeting will occur at a different location each day. On Thursday, the quarterly meeting will be held at the White House Old Executive Office Building. The location, due to security clearance considerations, will not be open to the public for in-person attendance, however the quarterly meeting's proceedings will be available by phone to all interested parties (in a listen-only capacity with the exception of the public comment period). Interested parties may access Thursday's meeting's proceedings by phone by using the following call-in number: 888–428–9490; passcode: 9482562. If asked, the call host's name is Clyde Terry. On Friday, the quarterly meeting will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC. Interested parties may join the meeting in person or by phone in a listening-only capacity (with the exception of the public comment period) using the following call-in number: 888–428–9490; passcode: 9482562. If asked, the call host's name is Clyde Terry.

MATTERS TO BE CONSIDERED: The Council will host a strategy session on legislative and other next steps for its 2012 "Rocking the Cradle" report on the rights of parents with disabilities and their children; and hear policy presentations on the topics of mental health services in higher education, and Medicaid managed care and the direct care workforce. The Council will also receive reports from its standing committees; and receive public comment during two town halls, on the topics of mental health services in higher education; and challenges of the direct care workforce.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Thursday, May 5

1:00–4:00 p.m.—Strategy session on legislative and other next steps for NCD's 2012 "Rocking the Cradle" report on the rights of parents with disabilities and their children.
4:00 p.m.—Adjourn

Friday, May 6

9:00–9:30 a.m.—Welcome and Introductions
9:30–10:15 a.m.—Update on the Progress Report
10:15–10:30 a.m.—Break
10:30–11:15 a.m.—Mental Health Services in Higher Education Panel

11:15–11:45 a.m.—Town Hall to Receive Comments on Mental Health Services in Higher Education
11:45 a.m.–12:45 p.m.—Lunch Break
12:45–1:30 p.m.—Medicaid Managed Care and Challenges for the Direct Care Workforce
1:30–2:00 p.m.—Town Hall to Receive Comments on Direct Care Workforce Challenges
2:00–2:15 p.m.—Break
2:15–3:30 p.m.—Council discussion about next fiscal year's policy priorities
3:30–4:30 p.m.—NCD Business Meeting
4:30 p.m.—Adjournment

PUBLIC COMMENT: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line "Public Comment" with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Wednesday, May 4, 2016. Priority will be given to those individuals who are in-person to provide their comments during the town hall portions of the agenda. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the May quarterly meeting will be limited to those regarding mental health services in higher education, and challenges to the direct care workforce, each during its respective slot of time for the themed town hall as previously noted in the agenda.

CONTACT PERSON: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for this teleconference meeting. The web link to access CART on Thursday, May 5, 2016 is: *https://www.streamtext.net/player?event=050516ncd100pm;* and on Friday, May 6, 2016 is: *https://www.streamtext.net/player?event=050615ncd830am.*

Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: April 20, 2016.

Rebecca Cokley,

Executive Director.

[FR Doc. 2016–09592 Filed 4–20–16; 4:15 pm]

BILLING CODE 8421–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this reinstatement of a previously approved collection, as required by Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow for 60 days of public comment. NCUA is soliciting comments on the reinstatement of the information collection described below.

DATES: Comments should be received on or before June 21, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or Email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is requesting reinstatement of the previously approved collection of information related to the Reverse Mortgage Guidance which sets forth standards intended to ensure that financial institutions effectively assess and manage the compliance and reputation risks associated with reverse mortgage products. The information collection will allow NCUA to evaluate the adequacy of a federally-insured credit union's internal policies and procedures as they relate to reverse mortgage products.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

II. Data

Title: Reverse Mortgage Products: Guidance for Managing Reputation Risks.

OMB Number: 3133–0187.

Type of Review: Reinstatement without change of a previously approved collection.

Description: The Reverse Mortgage Guidance sets forth standards intended to ensure that financial institutions effectively assess and manage the compliance and reputation risks associated with reverse mortgage products. The information collection will allow NCUA to evaluate the adequacy of a federally-insured credit union's internal policies and procedures as they relate to reverse mortgage products.

Respondents: Federally insured credit unions.

Estimated Number of Respondents: 28.

Frequency of Response: Once, then annually.

Estimated Burden Hours per Response: 40 hours to initially implement policies and procedures and to provide training; 8 hours annually to maintain program.

Estimated Total Annual Burden Hours: 1,344.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on April 19, 2016.

Dated: April 19, 2016

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–09379 Filed 4–21–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: April 18, 2016 (81 FR 22650).

TIME AND DATE: 11:15 a.m., Thursday, April 21, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Pursuant to the provisions of the "Government in Sunshine Act" notice is hereby given that the NCUA Board gave previous notice of the regular meeting of the NCUA Board scheduled for April 21, 2016. Prior to the meeting, on April 20, 2016, with less than seven days' notice to the public, the NCUA Board unanimously determined that agency business required changing the previously announced closed meeting time from 11:15 a.m. to 9:00 a.m. No earlier notice of the change was possible.

REVISED TIME: 9:00 a.m., Thursday, April 21, 2016.

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,
Secretary of the Board.

[FR Doc. 2016–09505 Filed 4–20–16; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that four meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Innovation (review of applications): This meeting will be closed.

Date and time: May 16, 2016; 2:00 p.m. to 3:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: May 17, 2016; 1:00 p.m. to 1:30 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: May 18, 2016; 3:00 p.m. to 5:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: May 19, 2016; 3:00 p.m. to 5:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: April 19, 2016.

Kathy Plowitz-Worden,
Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–09354 Filed 4–21–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Names: Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, Ohio State University (V160699) #1203.

Dates and Times: May 5, 2016; 8:45 a.m. EST–3:30 p.m. EST.

Place: Ohio State University, Columbus, Ohio 43210.

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

Agenda

Friday, May 5, 2016

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:00 a.m.: Ohio State MRSEC Overview (Hammel)
10:00 a.m.–10:20 a.m.: Coffee Break
10:20 a.m.–11:30 a.m.: IRGs & SEEDs
11:30 a.m.–12:00 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (Closed)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (Closed)

Reason for Closing: The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 19, 2016.

Crystal Robinson,
Committee Management Officer.

[FR Doc. 2016–09407 Filed 4–21–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Names: Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, Princeton University (V160701) #1203.

Dates and Times: May 16, 2016; 8:45 a.m. EST—3:30 p.m. EST.

Place: Princeton University, Princeton, NJ 08544.

Type of Meeting: Part-Open.

Contact Person: Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

Agenda

Friday, May 16, 2016

8:45 a.m.–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (CLOSED)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:05 a.m.: Princeton MRSEC Overview (Yazdani)
10:05 a.m.–10:25 a.m.: Coffee Break
10:25 a.m.–11:25 a.m.: IRGs & SEEDs
11:25 a.m.–11:55 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (CLOSED)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (CLOSED)

Reason for Closing: The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 19, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–09410 Filed 4–21–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date/Time: May 19, 2016; 12:30 p.m. to 5:30 p.m.; May 20, 2016; 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: OPEN.

Contact Person: Brenda Williams, National Science Foundation, 4201 Wilson Boulevard, Suite 1105, Arlington, Virginia 22230; Telephone: 703/292–8900.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director of NSF for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda

- Welcome and CISE updates
- Program updates for the CISE divisions of Information and Intelligent Systems and Computing and Communication Foundations
- Activities update: Computer Science for All
- Working group breakout sessions and report outs: New Partnership Models for CISE Research; and Data Science
- Closing remarks and wrap-up

Dated: April 19, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–09365 Filed 4–21–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Names: Proposal Review Panel for Materials Research—Materials Research Science & Engineering Centers Site Visit, New York University (V160700) #1203

Dates and Times: May 13, 2016; 8:45 a.m. EST–3:30 p.m. EST

Place: New York University, New York, NY

Type of Meeting: Part-Open

Contact Person: Dr. Daniele Finotello, Program Director, Materials Research Science & Engineering Centers, MRSEC. Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4676.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning further NSF support for the Center.

Agenda:

Friday, May 13, 2016

8:45am–9:00 a.m.: Informal Meeting NSF PDs & MRSEC Director (Closed)
9:00 a.m.–9:05 a.m.: Introductions
9:05 a.m.–10:05 a.m.: NYU MRSEC Overview (Ward)
10:05 a.m.–10:25 a.m.: Coffee Break
10:25 a.m.–11:25 a.m.: IRGs & SEEDs
11:25 a.m.–11:55 p.m.: Education and Outreach
12:00 p.m.–1:05 p.m.: Lunch with MRSEC students and postdocs
1:10 p.m.–2:15 p.m.: Shared Experimental Facilities Tour
2:15 p.m.–3:00 p.m.: NSF Panel Caucus (Closed)
3:00 p.m.–3:30 p.m.: NSF debrief MRSEC Executive Committee (Closed)

Reason for Closing: The work being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 19, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–09406 Filed 4–21–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0084]

Guidance for Closure of Activities Related to Recommendation 2.1, Flooding Hazard Reevaluation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Japan Lessons-Learned Division Interim Staff Guidance (JLD–ISG), JLD–ISG–2016–01, "Guidance for Activities Related to Near-Term Task Force Recommendation 2.1, Flooding Hazard Reevaluation; Focused Evaluation and Integrated Assessment." This draft JLD–ISG revision provides guidance and clarification to assist operating power reactor respondents and holders of construction permits under the NRC's regulations with the performance of the focused evaluations and revised integrated assessments for external flooding.

DATES: Submit comments by May 23, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Eric Bowman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2963; email: *Eric.Bowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0084 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0084.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. For the convenience of the reader, the ADAMS accession numbers for obtaining materials referenced in this document are provided in a table in the section of this notice entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0084 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Following the events at the Fukushima Dai-ichi nuclear power plant on March 11, 2011, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes, and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, "Recommendations for Enhancing Reactor Safety in the 21st Century, the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident," dated July 12, 2011. These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, dated September 9, 2011, and SECY–11–0137, dated October 3, 2011.

As directed by the Commission's SRM for SECY–11–0093, the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. In SECY–11–0124 and SECY–11–0137, the staff established the prioritization of the recommendations. After receiving the Commission's direction in SRM–SECY–11–0124 and SRM–SECY–11–0137, the NRC staff issued a request for information pursuant to section 50.54(f) of title 10 of the *Code of Federal Regulations* (10 CFR), "Conditions of licenses," on March 12, 2012, requesting licensees to reevaluate the seismic and flooding hazards at their sites using updated hazard information and current regulatory guidance and methodologies. For plants where the reevaluated hazard exceeds the plant's design basis, the licensee was to conduct an integrated assessment. The information gathering is considered to be Phase 1 and was requested to support Phase 2 decision-making and determine whether available or planned measures provide sufficient protection and mitigation capabilities or if further regulatory action should be pursued in the areas of seismic and flooding design, and emergency preparedness.

In COMSECY–14–0037, dated November 21, 2014, the NRC staff requested that the Commission review and approve changes to revise the Recommendation 2.1 flooding assessments and integrate the Phase 2 decision-making into the development and implementation of mitigating strategies in accordance with Order EA–12–049 and the related Mitigation of Beyond-Design-Basis Events rulemaking.

In SRM–COMSECY–14–0037, the Commission disapproved this recommendation. Instead, the Commission instructed the staff to develop a closure plan for the flooding reevaluation activities and to reassess the existing guidance for performing a Phase 1 integrated assessment in order to focus on those plants with the most potential for safety benefits.

In COMSECY–15–0019, the staff provided revised guidance for performing a Phase 1 integrated assessment and described a modified process for identifying the list of plants that would be required to perform an integrated assessment. The process proposed by the staff included the development of a graded, risk-informed and performance-based approach consistent with Commission direction to focus on those plants with the greatest potential need for safety enhancements. Specifically, the process included consideration and evaluation of local intense precipitation by performing a focused evaluation of the impact of the hazard and implementing any necessary programmatic, procedural, or plant modifications to address the hazard, taking into account available warning time. The process also considered flood protection and available physical margin, where licensees will confirm the capability of existing flood protection to address the hazard exceedance by performing a focused evaluation. For licensees where the reevaluated hazard cannot be addressed via existing or planned flood protection, the process also includes the performance of an integrated assessment, using revised guidance, in order to conduct more detailed evaluations of plant response capability. This revised integrated assessment will capture, among other information, quantitative characteristics about the reliability of various aspects of plant response (*e.g.,* reliability of equipment and manual actions), and risk insights with a focus on cliff-edge effects. The results will be used by the NRC to determine whether additional regulatory action, such as a plant-specific backfit, are warranted.

In SRM–COMSECY–15–0019, the Commission approved the staff's plans to modify the approach for integrated assessments to implement a graded approach for determining the need for, and prioritization and scope of, plant-specific integrated assessments. As discussed in COMSECY–15–0019, the majority of sites with reevaluated flooding hazards exceeding the design-basis flood are expected to screen out from the integrated assessment process. The licensees will instead provide focused evaluations to ensure appropriate actions are taken and that these actions are effective and reasonable.

The Nuclear Energy Institute (NEI) submitted guidance NEI 16–05, "External Flooding Assessment Guidelines," Revision 0, on April 12, 2016. The guidance is an industry-developed methodology that describes the flooding impact assessment process, which is intended to meet the requested information of an integrated assessment, as described in the document titled, "Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident," and to incorporate the changes described in COMSECY–15–0019.

Draft ISG JLD ISG 2016–01 is being issued to describe to stakeholders methods acceptable to the staff for performance of the focused evaluations and revised integrated assessments and describe some exceptions and clarifications to NEI 16–05, Revision 0.

This guidance is not intended for use in design-basis applications or in regulatory activities beyond the scope of performing the focused evaluations and integrated assessment part of NTTF Recommendation 2.1 flooding activities. This ISG is being issued in draft form for public comment to involve the public in development of the implementation guidance. Compliance with the ISG is not required.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document title	ADAMS accession No.
Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, dated March 12, 2012.	ML12053A340
SECY–11–0093, "Recommendations for Enhancing Reactor Safety in the 21st Century, the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident," dated July 12, 2011.	ML11186A950
Commission's staff requirements memorandum (SRM) for SECY–11–0093, dated August 19, 2011	ML112310021
SECY–11–0124, "Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report," dated September 9, 2011.	ML11245A158
SRM–SECY–11–0124, dated October 18, 2011	ML112911571
SECY–11–0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," dated October 3, 2011.	ML11272A111
SRM–SECY–11–0137, dated December 15, 2011	ML113490055
COMSECY–14–0037, "Integration of Mitigating Strategies for Beyond-Design-Basis External Events and the Reevaluaton (sic) of Flooding Hazards," dated November 21, 2014.	ML14238A616
SRM–COMSECY–14–0037, dated March 30, 2015	ML15089A236
COMSECY–15–0019, "Closure Plan for the Reevaluation of Flooding Hazards for Operating Nuclear Power Plants," dated June 30, 2015.	ML15153A104
SRM–COMSECY–15–0019, dated July 28, 2015	ML15209A682
NEI 16–05, "External Flooding Assessment Guidelines," Rev. 0, dated April 12, 2016	ML16105A327
Draft JLD–ISG–2016–01 "Guidance For Activities Related To Near-Term Task Force Recommendation 2.1, Flooding Hazard Reevaluation; Focused Evaluation and Integrated Assessment," Revision 0.	ML16090A140

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0084. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0084); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Proposed Action

By this action, the NRC is requesting public comments on draft ISG JLD–ISG–2016–01. This draft JLD–ISG proposes guidance related to the performance of a focused evaluation and integrated assessment as part of NTTF 2.1 flooding activities. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 15th day of April, 2016.

For the Nuclear Regulatory Commission.

Gregory Bowman,

Acting Director, Japan Lessons-Learned Division, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–09421 Filed 4–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390; NRC–2015–0162]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Application and Amendment to Facility Operating License; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on July 7, 2015, regarding the opportunity to request a hearing and to petition for leave to intervene on a request to amend the facility operating license of the Watts Bar Nuclear Plant, Unit 1. This action is necessary to include an additional supplement that corrected a typographical error in the original license amendment request that was erroneously omitted in the notice dated July 7, 2015.

DATES: The correction is effective April 22, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0162 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0162. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jeanne Dion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1349, email: *Jeanne.Dion@nrc.gov*.

SUPPLEMENTARY INFORMATION: In the FR on July 7, 2015, in FR Doc. 2015–16541, on page 38755, column 1, line 1, correct "amendment dated March 31, 2015, as supplemented on May 27 and June 15, 2015 (available in ADAMS under Accession Nos. ML15098A446, ML15147A611, and ML15167A359, respectively)" to read "amendment dated March 31, 2015, as supplemented on April 28, May 27, and June 15, 2015 (available in ADAMS under Accession Nos. ML15098A446, ML15124A334, ML15147A611, and ML15167A359, respectively)."

Dated at Rockville, Maryland, this 15th day of April 2016.

For the Nuclear Regulatory Commission.

Jeanne Dion,

Project Manager, Plant Licensing Branch, III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–09424 Filed 4–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Radioactive Waste

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70(b) "Public Notice of Receipt of an Application," please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through the Agencywide Documents Access and Management System and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register** (FR). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139; August 28, 2007. Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission; Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this application for an export license follows.

NRG EXPORT LICENSE APPLICATION

[Description of Material]

Name of applicant, date of application, date received, application No., Docket No.	Material type	Total quality	End use	Destination
Perma-Fix Northwest Richland, Inc. (PFNW), March 21, 2016, March 28, 2016, XW022, 11006230.	Homogenized solid waste in a grouted form that includes ash from the thermal processing of radium dials and non-combustibles, imported under license W033.	0.09 TBq	For land disposal in the orginating country; United Kingdom.	United Kingdom.

For the Nuclear Regulatory Commission.

Dated this 15th day of April 2016 at Rockville, Maryland.

Geoffrey B. Miller,

Acting Director, Office of International Programs.

[FR Doc. 2016–09418 Filed 4–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through Agencywide Documents Access and Management System and can be accessed through the Public Electronic Reading Room link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register** (FR). Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139; August 28, 2007. Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the FR to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license application follows.

NRC IMPORT LICENSE APPLICATION

Description of material	Name of applicant, date of application, date received, Application No., Docket No.			
	Material type	Total quantity	End use	Country from
Perma-Fix Northwest Richland, Inc. (PFNW), March 21, 2016, March 28, 2016, IW033, 11006229.	Radium luminised dials, made up of brass, aluminum, or mild steel case supporting a similar Metal dial face with moving indicators. Numbers and pointers on these dials and indicators are painted with a luminised radium paint.	Up to a maximum total of 0.09 TBq of radium luminized dials.	Import radioactive material for thermal processing, shredding, and grouting to provide a final waste form acceptable for land disposal in the originating country. The material will be returned to the United Kingdom under the associated export license (XW022).	United Kingdom.

For the Nuclear Regulatory Commission.

Dated this 15th day of April 2016 at Rockville, Maryland.

Geoffrey B. Miller,

Acting Director, Office of International Programs.

[FR Doc. 2016–09419 Filed 4–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0045]

Steam Generator Materials and Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 5.4.2.1, "Steam Generator Materials and Design." The NRC seeks comments on the proposed draft section revision of the Standard Review Plan (SRP),

concerning the design, fabrication, and testing of steam generators.

DATES: Comments must be filed no later than May 23, 2016. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0045. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carolyn Lauron, telephone: 301–415–2736, email: Carolyn.*Lauron@nrc.gov;* or Mark Notich, telephone: 301–415.3053, email: *Mark.Notich@nrc.gov;* both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0045 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0045.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The current revision of SRP Section 5.4.2.1, "Steam Generator Materials," is available in ADAMS under Accession No. ML070380192. The draft revision of SRP Section 5.4.2.1, "Steam Generator Materials and Design," is available in ADAMS under Accession No. ML16029A367. The redline strikeout version of SRP Section 5.4.2.1, "Steam Generator Materials and Design," is available in ADAMS under Accession No. ML16029A374.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0045 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NRC seeks public comment on the proposed draft section revision SRP Section 5.4.2.1. The changes to this SRP section reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this section.

Following the NRC staff's evaluation of public comments, the NRC intends to finalize SRP Section 5.4.2.1, Revision 4, in ADAMS and post it on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.* The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

III. Backfitting and Issue Finality

Issuance of these draft SRP sections, if finalized, would not constitute Backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, would not constitute Backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a Backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.*, an early site permit) and/or NRC regulatory approval (*e.g.*, a design certification rule) with specified issue finality provisions.

The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, 14th day of April, 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastructure, and Advanced Reactors, Office of New Reactors.

[FR Doc. 2016–09422 Filed 4–21–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–31; Order No. 3248]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 77 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On April 15, 2016, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 77 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment modifies the rates received by the contract partner after June 30, 2016. *Id.* Attachment A at 1.

The Postal Service intends for the Amendment to become effective 2 business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not materially affect cost coverage; therefore, the supporting financial documentation and certification originally filed in this docket remain applicable. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–31 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 25, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–09305 Filed 4–21–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Notice of United States Postal Service of Change in Terms Pursuant to Amendment to Priority Mail Contract 77, April 15, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–110; Order No. 3249]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 136 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On April 15, 2016, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 136 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment. Notice at 1. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.*

The Amendment changes terms for the annual adjustment provision of the contract.

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[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 136, with Portions Filed Under Seal, April 15, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not materially affect cost coverage; therefore, the supporting financial documentation and certification originally filed in this docket remain applicable. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–110 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Cassie D'Souza to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than April 25, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–09306 Filed 4–21–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77637; File No. SR–BatsEDGA–2016–06]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 14.10 Setting Forth Additional Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

April 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Exchange Rule 14.10 setting forth additional requirements for the listing of securities that are issued by the Exchange or any of its affiliates as well as the monitoring of such securities' trading activity on the Exchange. Proposed Rule 14.10 is based on Bats BZX Exchange, Inc. ("BZX") Rule 14.3(e), which was recently amended and filed for immediate effectiveness with the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt Rule 14.10 setting forth reporting requirements on the Exchange should the Exchange or EDGA Affiliate list a security on the Exchange (the "Affiliate Security"). Proposed Rule 14.10(a)(1) would define "EDGA Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." Proposed Rule 14.10(a)(2) would define "Affiliate Security" as "any security issued by an EDGA Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depositary Receipts as defined in Rule 14.8(d) and Investment Company Units as defined in Rule 14.2."[6]

In the event that an EDGA Affiliate seeks to list an Affiliate Security, paragraph (b)(1) of proposed Rule 14.10 would require that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors.

Proposed paragraph (b)(2) of proposed Rule 14.10 would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors and that such report describe the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards. Sub-paragraph (A) of proposed Rule 14.10(b)(2) would require the report include a description of the Affiliate Security's compliance with the Exchange's minimum share price requirement, and, sub-paragraph (B) would require the report to describe the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* SR–BatsBZX–2016–08 (filed for immediate effectiveness on April 13, 2016). *See also* Securities Exchange Act Release No. 66580 (March 13, 2012), 77 FR 16110 (March 19, 2012) (SR–BATS–2012–012).

[6] The Exchange notes that BZX Rule 14.3(e)(1)(B) excludes Index Fund Shares as defined under BZX Rule 14.11(c). The Exchange rules do not currently define Index Fund Shares. Therefore, the Exchange proposes to exclude Investment Company Unit as defined under Exchange Rule 14.2 as it believes Investment Company Units to be synonymous with Index Fund Shares.

Affiliate Security's compliance with each of the quantitative continued listing requirements.

Sub-paragraph (3) of proposed Rule 14.10(b) would require the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange would be required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors.

Sub-paragraph (4) of proposed Rule 14.10(b) would state that in the event the Exchange determines that the EDGA Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange would also be required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report would identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange would again be required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

Sub-paragraph (c) of proposed Rule 14.10 would require that throughout the trading of an Affiliate Security on the Exchange, the Exchange prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

Lastly, paragraph (d) of proposed Rule 14.10 would require the Exchange to promptly provide a copy of the reports required by sub-paragraphs (b) and (c) described above to the Commission.

The listing of an Affiliate Security or where an Affiliate Security is traded on the Exchange could potentially create a conflict of interest between the Exchange's self-regulatory responsibility to vigorously oversee the listing and trading of the stock on its market, and its own commercial or economic interests. Such "self-listing" may raise questions as to the Exchange's ability to independently and effectively enforce its rules against an affiliate or the operator/owner of its facility. In addition, such listing has the potential to exacerbate possible conflicts that may arise when the Exchange oversees competitors that may also be listed or traded on the Exchange. The Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to the Exchange's oversight of the listing and trading on the Exchange of any EDGA Affiliate Security, will help protect against any concern that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirements that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities and should help mitigate against any potential or actual conflicts of interest. The Exchange also believes that these additional requirements contained in the proposed rule change would provide additional assurance that any Affiliate Securities listed and traded on the Exchange by an EDGA Affiliate comply with the Exchange's listing standards and trading rules on an on-going basis. Finally, the Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if an EDGA Affiliate seeks to list a security on the Exchange or if an Affiliate Security is traded on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest. Further, the additional requirements contained in the proposed rule change would help to provide additional assurance: (i) That any Affiliate Securities listed on the Exchange by an EDGA Affiliate comply with the Exchange's listing standards both upon the initial listing of the EDGA Affiliate and on an on-going basis; and (ii) regarding the Exchange's monitoring of the trading of the Affiliate Security traded on the Exchange. The Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if an EDGA Affiliate seeks to list a security on the Exchange and where an Affiliate Security is traded on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather set forth the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or an Affiliate Security is traded on the Exchange. The Exchange further states that providing the reports required by the rule is in the best interest of investors and the public interest because it would provide greater transparency to market participants regarding the controls in place to address the potential conflicts of interest that may arise in the listing and trading of Affiliate Securities on the Exchange. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–06 and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09318 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 607, SEC File No. 270–561, OMB Control No. 3235–0634, Request for a New OMB Control No.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation E (17 CFR 230.601–230.610a) exempts from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") securities issued by a small business investment company ("SBIC") which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") or a closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Investment Company Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed $5,000,000 and certain other conditions are met. Rule 607 under Regulation E (17 CFR 230.607) entitled, "Sales material to be filed," requires sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.[1] Commission staff reviews sales material filed under rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

Respondents to this collection of information include SBICs and BDCs making an offering of securities under Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. However, we are requesting one annual response and an annual burden of one hour for administrative purposes. The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09361 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77639; File No. SR–BatsBZX–2016–08]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 14.3 Regarding the Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

April 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to make a series of changes to paragraph (e) of Exchange Rule 14.3 regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make a series of changes to paragraph (e) of Exchange Rule 14.3 regarding the reporting requirements on the Exchange should the Exchange or BZX Affiliate[5] list a security on the Exchange (the "Affiliate Security"). These changes are: (i) Expanding the definition of Affiliate Security under Exchange Rule 14.3(e)(1)(B); (ii) specifying that the Exchange shall also prepare a report describing the Exchange's monitoring of the trading of an Affiliate Security; and (iii) making a series of organizational changes.

Exchange Rule 14.3(e)(1)(B) currently defines Affiliate Security as "any security issued by a BZX Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c)." The Exchange proposes to expand the definition of Affiliate Security to include any Exchange-listed option on any security issued by a BZX Affiliate.

In the event that a BZX Affiliate seeks to list an Affiliate Security, paragraph (e)(2) of Rule 14.3 requires that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors. The Exchange proposes to renumber this paragraph as (e)(2)(A) and rename paragraph (2) as "Affiliate Securities Listed on the Exchange." The Exchange does not propose any additional changes to this section of Rule 14.3.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Exchange Rule 14.3(e)(1)(A) defines "BZX Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." The Exchange does not propose to amend the definition of BZX Affiliate.

Current Rule 14.3(e)(3) states that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors. Current sub-paragraph (i) of the Rule 14.3(e)(3) requires that the report describe the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards, including, as described in current sub-paragraph (i)(a), the Affiliate Security's compliance with the Exchange's minimum share price requirement, and, as described under current sub-paragraph (i)(b) the Affiliate Security's compliance with each of the quantitative continued listing requirements.

The Exchange proposes to renumber paragraph (3)(A) of Rule 14.3(e) as paragraph as (2)(B) and reformat this section of the rule as follows. Paragraph (2)(B) would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors describing the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards. Paragraph (2)(B)(i) would require that the report include a description of the Affiliate Security's compliance with the Exchange's minimum share price requirement and paragraph (2)(B)(ii) would require that the report include a description of the Affiliate Security's compliance with each of the quantitative continued listing requirements. The Exchange does not propose any substantive changes to this section of the rule.

Current sub-paragraph (ii) of Rule 14.3(e)(3)(A) states that the report shall also describe the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11.17, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules. The Exchange proposes to relocate current sub-paragraph (3)(A)(ii) under new sub-paragraph (3) to Rule 14.3(e). The Exchange proposes to include additional language specifying that the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the activity described in the sub-paragraph. The Exchange proposes to include additional language that these requirements will be applicable throughout the trading of the Affiliate Security on the Exchange. Current sub-paragraph (3)(B) of Rule 14.3(e) also states that to the extent the Exchange uses Exchange staff to conduct surveillance of trading activity on the Exchange, the Exchange is required to engage an independent third party once a year to review and prepare a report regarding surveillance of the Affiliate Security and promptly forward to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission a copy of the report prepared by the independent third party. The Exchange proposes to eliminate the requirements of current sub-paragraph (3)(B) based on the fact that this requirement is not applicable on other national securities exchanges with similar rules regarding the listing or trading of an affiliate security.[6] The Exchange does not propose any additional substantive changes to these sections of the rule.

Current Rule 14.3(e)(3)(A) also requires that the Exchange to promptly furnish a copy of the quarterly report required by current paragraph (e)(3)(A) to the Commission. The Exchange proposes to renumber this paragraph as (e)(4) and revise it to state that a copy of the reports required by proposed renumbered sub-paragraphs (2) and (3) of Rule 14.3(e), discussed above, will be forwarded promptly to the Commission.

Current sub-paragraph (C) of Rule 14.3(e)(3) requires the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange is required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission. The Exchange proposes to renumber this paragraph as (2)(C) of Rule 14.3(e) to conform with the reformatting of Rule 14.3(e) proposed above. The Exchange also proposes to delete the requirement that the report also be sent to the Commission as this requirement is proposed to be included in proposed paragraph (e)(4) discussed below. The Exchange does not propose any substantive changes to this section of the rule.

Lastly, current Rule 14.3(e)(4) states that in the event the Exchange determines that the BZX Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange is also required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report identifies the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange is again required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any. The Exchange proposes to renumber this section of the rule as (2)(D) of Rule 14.3(e) to conform with the reformatting of Rule 14.3(e) proposed above. The Exchange does not propose any substantive changes to this section of the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will continue to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. The Exchange believes that the proposed amendments to Rule 14.3(e) would continue to eliminate any perception of a potential conflict of interest if a BZX Affiliate seeks to list a security on the Exchange. The Exchange notes that the elimination of current sub-paragraph (3)(B) does not present any risk to investors or the public interest, as the Exchange is retaining the requirement to furnish quarterly reports to both the Regulatory Oversight Committee of the Exchange's Board and to the Commission. The Exchange also notes that other national securities exchanges with similar rules do not have such a provision.[9] Lastly, the Exchange believes that the reorganization of, and the additional specificity proposed to be included in Rule 14.3(e) promotes just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the controls in place to address the potential conflicts of interest that may arise in the listing or trading of Affiliate Securities on the Exchange.

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[6] *See, e.g.,* NYSE Rule 497; Nasdaq Rule 4370.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather provide additional specificity and transparency to Members, Users, and the investing public regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or the Exchange seeks to trade an Affiliate Security on the Exchange. The Exchange further states that the proposal will provide greater transparency concerning the controls in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–08 and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09320 Filed 4–21–16; 8:45 am]

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[9] *See supra,* note 6.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77638; File No. SR–BatsBYX–2016–05]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 14.10 Setting Forth Additional Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

April 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to adopt Exchange Rule 14.10 setting forth additional requirements for the listing of securities that are issued by the Exchange or any of its affiliates as well as the monitoring of such securities' trading activity on the Exchange. Proposed Rule 14.10 is based on Bats BZX Exchange, Inc. ("BZX") Rule 14.3(e), which was recently amended and filed for immediate effectiveness with the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt Rule 14.10 setting forth reporting requirements on the Exchange should the Exchange or BYX Affiliate list a security on the Exchange (the "Affiliate Security"). Proposed Rule 14.10(a)(1) would define "BYX Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." Proposed Rule 14.10(a)(2) would define "Affiliate Security" as "any security issued by a BYX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depositary Receipts as defined in Rule 14.8(d) and Investment Company Units as defined in Rule 14.2."[6]

In the event that a BYX Affiliate seeks to list an Affiliate Security, paragraph (b)(1) of proposed Rule 14.10 would require that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors.

Proposed paragraph (b)(2) of proposed Rule 14.10 would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors and that such report describe the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards. Sub-paragraph (A) of proposed Rule 14.10(b)(2) would require the report include a description of the Affiliate Security's compliance with the Exchange's minimum share price requirement, and, sub-paragraph (B) would require the report to describe the Affiliate Security's compliance with each of the quantitative continued listing requirements.

Sub-paragraph (3) of proposed Rule 14.10(b) would require the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange would be required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors.

Sub-paragraph (4) of proposed Rule 14.10(b) would state that in the event the Exchange determines that the BYX Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange would also be required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report would identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange would again be required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

Sub-paragraph (c) of proposed Rule 14.10 would require that throughout the trading of an Affiliate Security on the Exchange, the Exchange prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* SR–BatsBZX–2016–08 (filed for immediate effectiveness on April 13, 2016). *See also* Securities Exchange Act Release No. 66580 (March 13, 2012), 77 FR 16110 (March 19, 2012) (SR–BATS–2012–012).

[6] The Exchange notes that BZX Rule 14.3(e)(1)(B) excludes Index Fund Shares as defined under BZX Rule 14.11(c). The Exchange rules do not currently define Index Fund Shares. Therefore, the Exchange proposes to exclude Investment Company Unit as defined under Exchange Rule 14.2 as it believes Investment Company Units to be synonymous with Index Fund Shares.

Lastly, paragraph (d) of proposed Rule 14.10 would require the Exchange to promptly provide a copy of the reports required by sub-paragraphs (b) and (c) described above to the Commission.

The listing of an Affiliate Security or where an Affiliate Security is traded on the Exchange could potentially create a conflict of interest between the Exchange's self-regulatory responsibility to vigorously oversee the listing and trading of the stock on its market, and its own commercial or economic interests. Such "self-listing" may raise questions as to the Exchange's ability to independently and effectively enforce its rules against an affiliate or the operator/owner of its facility. In addition, such listing has the potential to exacerbate possible conflicts that may arise when the Exchange oversees competitors that may also be listed or traded on the Exchange. The Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to the Exchange's oversight of the listing and trading on the Exchange of any BYX Affiliate Security, will help protect against any concern that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirements that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities and should help mitigate against any potential or actual conflicts of interest. The Exchange also believes that these additional requirements contained in the proposed rule change would provide additional assurance that any Affiliate Securities listed and traded on the Exchange by a BYX Affiliate comply with the Exchange's listing standards and trading rules on an on-going basis. Finally, the Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if a BYX Affiliate seeks to list a security on the Exchange or if an Affiliate Security is traded on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest. Further, the additional requirements contained in the proposed rule change would help to provide additional assurance: (i) That any Affiliate Securities listed on the Exchange by a BYX Affiliate comply with the Exchange's listing standards both upon the initial listing of the BYX Affiliate and on an on-going basis; and (ii) regarding the Exchange's monitoring of the trading of the Affiliate Security traded on the Exchange. The Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if a BYX Affiliate seeks to list a security on the Exchange and where an Affiliate Security is traded on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather set forth the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or an Affiliate Security is traded on the Exchange. The Exchange further states that providing the reports required by the rule is in the best interest of investors and the public interest because it would provide greater transparency to market participants regarding the controls in place to address the potential conflicts of interest that may arise in the listing and trading of Affiliate Securities on the Exchange. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR&BatsBYX–2016–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–05 and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09319 Filed 4–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77641; File No. SR–NYSEARCA–2016–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as Well as Amending the Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Reflect the Changes

April 18, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 4, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish fees relating to end users and amend the definition of "affiliate," as well as to amend the co-location section of the Arca Options Fee Schedule (the "Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission ("Commission").

The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish fees relating to certain end users and amend the definition of "affiliate," as well as to amend the co-location[4] section of the Fee Schedules to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission.

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[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

Information flows over existing network connections in two formats:

- Multicast format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast; and
- Unicast format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.

Fees for Rebroadcasting Users Related to Their Multicast End Users

As a general matter, market data is broadcast to Users[5] in multicast format. Users can rebroadcast data they receive in multicast format to their customers[6] if they choose. The Exchange proposes to add to its co-location Fee Schedules definitions of a "Rebroadcasting User" and a "Multicast End User."

> A "Rebroadcasting User" would be a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers.
>
> A "Multicast End User" would be a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User. A Multicast End User may be, but is not required to be, another User or a Hosted Customer.

The Exchange proposes that a User that normalizes raw market data before sending it to its customers would not be a "Rebroadcasting User." Such normalized data is altered before rebroadcasting, and is no longer in the form received from the Exchange. For example, a User may opt to normalize the raw data distributed by the Exchange and its affiliates by altering it to put it in viewable or algorithmic form, such as by putting it though a feed handler. In addition, the Exchange proposes that a User that rebroadcasts data received from third parties would not be a "Rebroadcasting User," as the data would not be received from the Exchange.

A Rebroadcasting User may have more than one connection to a single Multicast End User. The multicast format permits a Multicast End User to rebroadcast the data received. Each of such customers is also considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[7]

The Exchange proposes to charge Rebroadcasting Users fees relating to each Multicast End User as follows:

- If the Rebroadcasting User has one or two connections, either directly or through another Multicast End User, to a Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge.
- If the Rebroadcasting User has more than two connections to a Multicast End User, either directly or through another Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge for the first two connections (in the aggregate) and $850 for each additional connection.[8]

Fees for Transmittal Users Related to Their Unicast End Users

Messages, such as those to send an order or related to clearing a trade, are transmitted in unicast format. A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange. For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. The Exchange proposes to add to its co-location Fee Schedules definitions of a "Transmittal User" and a "Unicast End User."

> A "Transmittal User" would be a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.
>
> A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker. A Unicast End User may be, but is not required to be, a User or a Hosted Customer.

A Transmittal User may establish more than one connection for a single Unicast End User. The unicast format permits a Unicast End User to enable one or more of its customers to transmit messages to and from the Unicast End User. Each of such customers is also considered a Unicast End User.[9]

The Exchange proposes to charge Transmittal Users fees relating to each Unicast End User as follows:

- If the Transmittal User has one or two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge.
- If the Transmittal User has more than two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge for the first two connections (in the aggregate) and $750 for each additional connection.[10]

If a Transmittal User's customer sends all unicast transmissions through a floor participant, such as a floor broker, that customer would not be considered a Unicast End User even if such customer is enabled to use unicast communications. Accordingly, the Transmittal User would not be charged with respect to its connection to such customer.

A User may be both a Rebroadcasting User and a Transmittal User.

Definition of Affiliate

The proposed fees would not apply to a Multicast End User that is an "Affiliate" of a Rebroadcasting User or a Unicast End User that is an "Affiliate" of a Transmittal User.

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[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE MKT LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] As used in the context of the proposed fees, the term "customer" refers to any person who has a contractual relationship with a User or the customer of a User for the provision to that customer of unicast or multicast services. A customer of a User may include another User or a "Hosted Customer," as that term is defined in the Fee Schedules.

[7] The Exchange is not aware of any customer of a Multicast End User that rebroadcasts data, but if such a relationship did exist, the customer would also be considered a Multicast End User.

[8] For example, if a Rebroadcasting User has three connections to one Multicast End User, the Rebroadcasting User would be charged $2,550 per month with respect to such Multicast End User: $1,700 per month for the first two connections plus $850 per month for the third connection. If a Rebroadcasting User has one connection to a Multicast End User that itself has three customers that are also Multicast End Users, each with one or two connections, the Exchange would charge the Rebroadcasting User $6,800 per month, that is, $1,700 per month for each Multicast End User.

[9] The Exchange is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User.

[10] For example, if a Transmittal User has three connections to one Unicast End User, the Transmittal User would be charged $2,250 per month with respect to such Unicast End User: $1,500 per month plus $750 per month. If a Transmittal User has one connection to a Unicast End User that itself has three customers that are also Unicast End Users, each with one or two connections, the Exchange would charge the Transmittal User $6,000 per month, that is, $1,500 per month for each Unicast End User.

Presently, for purposes of co-location fees the "Affiliate" of a User is defined as "any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User."[11] The Exchange proposes to revise the definition of "Affiliate" for clarity and to include Affiliates of Multicast and Unicast End Users. The proposed definition would be as follows:

> An "Affiliate" of a User is any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User. For purposes of this definition, "control" means ownership or control of 50% or greater.

The Exchange proposes to amend the current definition of Affiliate to clarify that the control relationship does not exist only when a User or Hosted Customer is under the common ownership or control of the first User. Instead, an Affiliate relationship exists whenever the two entities are under common control and irrespective of which entity controls the other. In addition, the Exchange proposes to move the description of what "control" means to the end of the definition, to allow for addition of the definitions of Affiliate of Rebroadcasting Users and Transmittal Users.[12]

By using the same concept of "control" for the definitions of Affiliate of Rebroadcasting Users and Transmittal Users as for the general definition, the Exchange believes that the expanded definition would be consistent in its application across the co-location related fees.

Support for Rebroadcasting Users and Transmittal Users

The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established. Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End Users and Unicast End Users, respectively. The higher fees proposed in connection with the multicast format reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

Based on its experience, the Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively.[13] Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.[14] As a result, as a general matter the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users.

By contrast, in its experience the Exchange has found that entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved. As a result, its administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting to a Multicast End User or Unicast End User, respectively.[15] In the Exchange's experience, this is true irrespective of whether the Affiliate end user is itself a User or is located outside of co-location. Accordingly, the Exchange proposes to exclude Affiliates, including those Affiliates that are not Users, from the definitions of Multicast End Users and Unicast End Users.

The Exchange does not provide network support for end users that receive normalized data. Because the normalized data is altered, the User that normalizes and then rebroadcasts normalized data acts as the source of the feed. As a result the User does not need the Exchange's assistance if an issue arises with its normalized feed. Accordingly, the Exchange proposes to exclude a User that normalizes data from the definition of Rebroadcasting User.

Rebroadcasting Users and Transmittal Users need network support, and the Exchange provides it, irrespective of whether their Multicast or Unicast End Users are Users. For this reason, the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users both inside and outside of co-location. Accordingly, the Exchange proposes not to limit the definitions of Multicast End Users and Unicast End Users to end users that are also Users.

Rebroadcasting User and Transmittal User Reporting

In order to assess the proposed fees accurately, the Exchange proposes that Rebroadcasting Users and Transmittal Users be required to report the following to the Exchange on a monthly basis: (a) The number of their Multicast End Users and Unicast End Users, and (b) the number of connections to each such Multicast End User and Unicast End User. A User that excludes an Affiliate from its list of Multicast End Users or Unicast End Users consistent with the proposed definitions may be required to certify to the Exchange the Affiliate status of such end user.[16] The Exchange proposes to revise the Fee Schedules accordingly.

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[11] The Exchange added a definition of "Affiliate" for co-location fees in connection with its partial cabinet solution bundles. *See* Exchange Act Release No. 76616 (Dec. 10, 2015), 80 FR 78282 (December 16, 2015) (SR–NYSEArca–2015–102).

[12] The proposed definition of Affiliate does not encompass two Multicast End Users or Unicast End Users. Accordingly, if a Rebroadcasting User or Transmittal User had two Multicast End Users or Unicast End Users, respectively, that were under common control or one controlled the other, they would be treated as two end users for purposes of the proposed fees.

[13] For example, if a Multicast End User had an issue such as a loss of connection to the multicast service or dropping packets of data (*i.e.*, portions of the data are dropped), the Exchange would work with the Rebroadcasting User to determine the issue and, if it was related to Exchange services, remedy it.

[14] The Exchange notes that in its experience not all Users have detailed monitoring for their networks, and some Rebroadcasting Users and Transmittal Users do not troubleshoot within their own networks to see where the cause lies before asking the Exchange for support.

[15] By comparison, as noted above, when the Exchange provides support to a Rebroadcasting User or Transmittal User regarding issues related to its Multicast or Unicast End Users, the Exchange works with as many separate entities as there are parties involved.

Users that are not Rebroadcasting Users or Transmittal Users may be asked to certify as much to the Exchange.

Users may independently set fees that they charge Multicast End Users and Unicast End Users. The Exchange would not be a party to the contractual relationship between Rebroadcasting Users and Transmittal Users and their customers and would not receive a share of any fees charged by Rebroadcasting Users and Transmittal Users for their services.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a Member, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [17] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[18]

Technical Change

Finally, the Exchange proposes to delete the obsolete text in the Fee Schedules related to the Hosting Fee of $500 per Hosted Customer that was in effect until December 31, 2015. In addition, the Exchange proposes to delete the "Effective January 1, 2016" text that precedes the current description of the $1,000 monthly charge per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted because it is no longer necessary as these fees are current fees.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[20] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Overall, the Exchange believes that the proposed change is consistent with the Act because the Exchange offers the co-location services described herein as a convenience to Users, but in so doing incurs certain costs, including costs related to the Data Center facility, hardware and equipment and costs related to personnel required for installation and ongoing monitoring, support and maintenance of such services.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Co-location services would continue to be offered by the Exchange in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

In addition, the proposed end user fees would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users.

In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed fees are reasonable in that they are designed to defray applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs, such as the costs of maintaining multiple connections with multiple providers. The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established.

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[16] The Exchange may review available information regarding the Affiliate status of an end user and reserves the right to request additional information to verify the Affiliate status of such entity. The Exchange would approve a request to exclude an Affiliate unless it determines that the certification is not accurate. The Exchange believes that this procedure is consistent with the certification procedures relating to its Partial Cabinet Solution bundles. *See* Exchange Act Release No. 76616, *supra* note 11, at 7402.

[17] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[18] *See* Securities Exchange Act Release No. 70173, *supra* note 5 at 50459. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSE–2015–11 and SR–NYSEMKT–2015–15.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(4).

Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End Users and Unicast End Users, respectively. The Exchange believes that the proposed higher fees proposed in connection with the multicast format are reasonable because they reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

In addition, based on its experience, the Exchange believes that the proposed fees are reasonable in that, as a general matter, the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users. The Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively. Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.

The Exchange believes that it is reasonable to charge Rebroadcasting Users and Transmittal Users the proposed fees irrespective of whether their Multicast or Unicast End User is a User, because the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users that are outside of co-location as well as those that are Users. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assess related to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

In addition, the Exchange believes that it is reasonable to charge the same amount for one or two connections because it would encourage Users and their customers to establish two connections and thereby create redundancy in the connections.

The Exchange believes that the proposed amendments to the definition of Affiliates regarding the control relationship are reasonable because they would make the definition more accessible and transparent and provide market participants with clarity as to what entities are considered Affiliates, ensuring that Users exclude all possible Affiliates from the proposed fees and the existing fees for Partial Cabinet Solution bundles. The Exchange believes that setting the common ownership or control threshold in the definition of Affiliates of Multicast End Users and Unicast End Users at 50% is reasonable because it is the same threshold as in the current definition of Affiliates.

Expanding the definition of Affiliates, adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User, and adding the proposed note on the reporting requirements to the Fee Schedules would make such definitions and requirements accessible and transparent and provide market participants with clarity as to the application of the proposed fees. The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by including the definitions and reporting requirements in the Fee Schedules, the proposed change would provide all Users with clarity as to the availability and application of co-location services and fees. Such end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that excluding Affiliates from the definitions of Multicast End Users and Unicast End Users is reasonable because, in its experience, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange's administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting multicast or unicast data to a Multicast End User or Unicast End User, respectively. In its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved.

The Exchange believes that having the definition of Affiliates encompass non-Users is reasonable because in its experience entities that are Affiliates typically act as one entity irrespective of whether one or more of them are not Users. If the definition did not encompass non-Users, a User would have to pay the proposed fee if it rebroadcast or transmitted multicast or unicast data to an end user that was not a User but otherwise met the definition of Affiliate. However, the Exchange would incur the same costs irrespective of whether the end user is itself a User or is located outside of co-location. Accordingly, the Exchange believes that having the definition of Affiliates encompass non-Users avoids disparate treatment of a Rebroadcasting User or Transmittal User that has a non-User as its Affiliate, as compared to one that has a User as its Affiliate.

The Exchange believes that it is reasonable that, under the proposed definition, two Multicast End Users or Unicast End Users would not be considered Affiliates even if they otherwise met the requirements of the definition. The Exchange has no direct contract with a Rebroadcasting User's Multicast End Users for connectivity to Exchange data, or with a Transmittal User's Unicast End Users for the transmission of messages to and from the Exchange. As a result, the Exchange would not be able to independently ascertain which Multicast and

Transmittal Users met the definition of Affiliates, and would have no standing to require such Multicast and Unicast End Users to report their Affiliates. The Exchange believes it would create an unnecessary administrative burden on Users to require Rebroadcasting Users and Transmittal Users to determine which, if any, of their Multicast and Unicast End Users were affiliated, and to report such to the Exchange.

The Exchange believes that the proposal to exclude Affiliates from the definitions of Multicast End User and Unicast End User is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have divided their various business activities among separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. In addition, the inclusion of non-Users in the definition of Affiliates is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have Affiliates that are not Users, as compared to Users whose Affiliates are all Users.

The Exchange believes that the proposal to exclude from the definition of Multicast End Users a User that normalizes raw data before rebroadcasting it to its customers is reasonable and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because a User that normalizes and then rebroadcasts normalized data acts as the source of the feed, and so does not need the Exchange's assistance if an issue arises with its normalized feed. As a result, the Exchange does not incur the same costs in relation to end users of normalized data as it does in relation to Multicast End Users.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage sending orders to Floor brokers for execution, thereby encouraging additional displayed liquidity on the Exchange. This would encourage the execution of transactions on a public registered exchange, thereby promoting public price discovery—an objective fully consistent with the Act.[22] The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders to the Floor for execution, thereby contributing to robust levels of liquidity on the Floor, which benefits all market participants.

The Exchange believes that the proposal to have Users report the number of their Multicast End Users and Unicast End Users and the number of connections to each such Multicast End User and Unicast End User is reasonable because it will ensure that the proposed fees are assessed accurately and will provide market participants with clarity as to how the fees will be assessed.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the Data Center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same range of products and services are available to all Users). The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections.

In addition, the Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because they would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users, as well as applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users. In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has tailored the proposed definition of Affiliate to include User and non-User Affiliates. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assessed relating to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has excluded Affiliates from the proposed definitions of Multicast End Users and Unicast End Users. As a result, the proposed end user fees exclude fees related to end users that, in the Exchange's experience, typically act as one entity, with one infrastructure and one administration.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage providing liquidity on the Exchange, thereby contributing to the Exchange's competitiveness with other markets. In addition, the Exchange believes that expanding the definition of Affiliates and adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User to the Fee Schedules would make such definitions accessible and transparent and provide market participants with clarity as to the availability and application of the proposed fees.

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[22] *See* Exchange Act Release No. 73333 (October 9, 2014), 79 FR 62223 (October 16, 2014) (SR–NYSE–2014–32 and SR–NYSEMKT–2014–56) ("The Commission also notes that . . . the ALO limit order is designed to provide displayed liquidity to the market and thereby contribute to public price discovery—an objective that is fully consistent with the Act"); *see also* 15 U.S.C. 78k–1(a)(1)(c)(iii) and (iv) (objectives for the national market system include assuring the availability of information with respect to quotations in securities and the practicability of brokers executing investors' orders in the best market).

[23] 15 U.S.C. 78f(b)(8).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEARCA–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEARCA–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEARCA–2016–19, and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09322 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 606 of Regulation NMS, SEC File No. 270–489, OMB Control No. 3235–0541.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 606 of Regulation NMS ("Rule 606") (17 CFR 242.606) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et. seq.*).

Rule 606 (formerly known as Rule 11Ac1–6) requires broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. Broker-dealers must conduct such evaluations to fulfill the duty of best execution that they owe their customers.

The collection of information obligations of Rule 606 apply to broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that out of the currently 4,240 broker-dealers that are subject to the collection of information obligations of Rule 606, clearing brokers bear a substantial portion of the burden of complying with the reporting and recordkeeping requirements of Rule 606 on behalf of small to mid-sized introducing firms. There currently are approximately 185 clearing brokers. In addition, there are approximately 81 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of Rule 606.

The Commission staff estimates that each firm significantly involved in order routing practices incurs an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 606, or a burden of 160 hours per year. With an estimated 266[1] broker-dealers significantly involved in order routing practices, the total industry-wide burden per year to comply with the quarterly reporting requirement in Rule 606 is estimated to be 42,560 hours (160 × 266).

Rule 606 also requires broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally bear the burden of responding to these requests. The Commission staff estimates that an average clearing broker incurs an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 606. With an estimated 185 clearing brokers subject to Rule 606, the total industry-wide burden per year to comply with the customer response requirement in Rule 606 is estimated to be 74,000 hours (185 × 400).

The collection of information obligations imposed by Rule 606 are mandatory. The responses will be available to the public and will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09360 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 185 clearing brokers + 81 introducing brokers = 266.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77640; File No. SR–NYSEMKT–2016–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as Well as Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Reflect the Changes

April 18, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 4, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish fees relating to end users and amend the definition of "affiliate," as well as to amend the co-location section of the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission ("Commission"). The proposed change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish fees relating to certain end users and amend the definition of "affiliate," as well as to amend the co-location[4] section of its Price List and Fee Schedule to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission.

Information flows over existing network connections in two formats:

- Multicast format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast; and
- Unicast format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.

Fees for Rebroadcasting Users Related to Their Multicast End Users

As a general matter, market data is broadcast to Users[5] in multicast format. Users can rebroadcast data they receive in multicast format to their customers[6] if they choose. The Exchange proposes to add to its co-location Price List and Fee Schedule definitions of a

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67.

[6] As used in the context of the proposed fees, the term "customer" refers to any person who has a contractual relationship with a User or the customer of a User for the provision to that customer of unicast or multicast services. A customer of a User may include another User or a "Hosted Customer," as that term is defined in the Price List and Fee Schedule.

"Rebroadcasting User" and a "Multicast End User."

> A "Rebroadcasting User" would be a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers.
>
> A "Multicast End User" would be a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User. A Multicast End User may be, but is not required to be, another User or a Hosted Customer.

The Exchange proposes that a User that normalizes raw market data before sending it to its customers would not be a "Rebroadcasting User." Such normalized data is altered before rebroadcasting, and is no longer in the form received from the Exchange. For example, a User may opt to normalize the raw data distributed by the Exchange and its affiliates by altering it to put it in viewable or algorithmic form, such as by putting it though a feed handler. In addition, the Exchange proposes that a User that rebroadcasts data received from third parties would not be a "Rebroadcasting User," as the data would not be received from the Exchange.

A Rebroadcasting User may have more than one connection to a single Multicast End User. The multicast format permits a Multicast End User to rebroadcast the data received. Each of such customers is also considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[7]

The Exchange proposes to charge Rebroadcasting Users fees relating to each Multicast End User as follows:

- If the Rebroadcasting User has one or two connections, either directly or through another Multicast End User, to a Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge.
- If the Rebroadcasting User has more than two connections to a Multicast End User, either directly or through another Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge for the first two connections (in the aggregate) and $850 for each additional connection.[8]

Fees for Transmittal Users Related to Their Unicast End Users

Messages, such as those to send an order or related to clearing a trade, are transmitted in unicast format. A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange. For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. The Exchange proposes to add to its co-location Price List and Fee Schedule definitions of a "Transmittal User" and a "Unicast End User."

> A "Transmittal User" would be a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.
>
> A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker. A Unicast End User may be, but is not required to be, a User or a Hosted Customer.

A Transmittal User may establish more than one connection for a single Unicast End User. The unicast format permits a Unicast End User to enable one or more of its customers to transmit messages to and from the Unicast End User. Each of such customers is also considered a Unicast End User.[9]

The Exchange proposes to charge Transmittal Users fees relating to each Unicast End User as follows:

- If the Transmittal User has one or two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge.
- If the Transmittal User has more than two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge for the first two connections (in the aggregate) and $750 for each additional connection.[10]

If a Transmittal User's customer sends all unicast transmissions through a floor participant, such as a floor broker, that customer would not be considered a Unicast End User even if such customer is enabled to use unicast communications. Accordingly, the Transmittal User would not be charged with respect to its connection to such customer.

A User may be both a Rebroadcasting User and a Transmittal User.

Definition of Affiliate

The proposed fees would not apply to a Multicast End User that is an "Affiliate" of a Rebroadcasting User or a Unicast End User that is an "Affiliate" of a Transmittal User.

Presently, for purposes of co-location fees the "Affiliate" of a User is defined as "any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User."[11] The Exchange proposes to revise the definition of "Affiliate" for clarity and to include Affiliates of Multicast and Unicast End Users. The proposed definition would be as follows:

> An "Affiliate" of a User is any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User. For purposes of this definition, "control" means ownership or control of 50% or greater.

The Exchange proposes to amend the current definition of Affiliate to clarify that the control relationship does not exist only when a User or Hosted Customer is under the common ownership or control of the first User. Instead, an Affiliate relationship exists whenever the two entities are under common control and irrespective of which entity controls the other. In addition, the Exchange proposes to move the description of what "control" means to the end of the definition, to allow for addition of the definitions of Affiliate of Rebroadcasting Users and Transmittal Users.[12]

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[7] The Exchange is not aware of any customer of a Multicast End User that rebroadcasts data, but if such a relationship did exist, the customer would also be considered a Multicast End User.

[8] For example, if a Rebroadcasting User has three connections to one Multicast End User, the Rebroadcasting User would be charged $2,550 per month with respect to such Multicast End User: $1,700 per month for the first two connections plus $850 per month for the third connection. If a Rebroadcasting User has one connection to a Multicast End User that itself has three customers that are also Multicast End Users, each with one or two connections, the Exchange would charge the Rebroadcasting User $6,800 per month, that is, $1,700 per month for each Multicast End User.

[9] The Exchange is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User.

[10] For example, if a Transmittal User has three connections to one Unicast End User, the Transmittal User would be charged $2,250 per month with respect to such Unicast End User: $1,500 per month plus $750 per month. If a Transmittal User has one connection to a Unicast End User that itself has three customers that are also Unicast End Users, each with one or two connections, the Exchange would charge the Transmittal User $6,000 per month, that is, $1,500 per month for each Unicast End User.

[11] The Exchange added a definition of "Affiliate" for co-location fees in connection with its partial cabinet solution bundles. *See* Exchange Act Release No. 76613 (Dec. 10, 2015), 80 FR 78262 (December 16, 2015) (SR–NYSEMKT–2015–89).

By using the same concept of "control" for the definitions of Affiliate of Rebroadcasting Users and Transmittal Users as as for the general definition, the Exchange believes that the expanded definition would be consistent in its application across the co-location related fees.

Support for Rebroadcasting Users and Transmittal Users

The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established. Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End Users and Unicast End Users, respectively. The higher fees proposed in connection with the multicast format reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

Based on its experience, the Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively.[13] Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.[14] As a result, as a general matter the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users.

By contrast, in its experience the Exchange has found that entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved. As a result, its administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting to a Multicast End User or Unicast End User, respectively.[15] In the Exchange's experience, this is true irrespective of whether the Affiliate end user is itself a User or is located outside of co-location. Accordingly, the Exchange proposes to exclude Affiliates, including those Affiliates that are not Users, from the definitions of Multicast End Users and Unicast End Users.

The Exchange does not provide network support for end users that receive normalized data. Because the normalized data is altered, the User that normalizes and then rebroadcasts normalized data acts as the source of the feed. As a result the User does not need the Exchange's assistance if an issue arises with its normalized feed. Accordingly, the Exchange proposes to exclude a User that normalizes data from the definition of Rebroadcasting User.

Rebroadcasting Users and Transmittal Users need network support, and the Exchange provides it, irrespective of whether their Multicast or Unicast End Users are Users. For this reason, the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users both inside and outside of co-location. Accordingly, the Exchange proposes not to limit the definitions of Multicast End Users and Unicast End Users to end users that are also Users.

Rebroadcasting User and Transmittal User Reporting

In order to assess the proposed fees accurately, the Exchange proposes that Rebroadcasting Users and Transmittal Users be required to report the following to the Exchange on a monthly basis: (a) The number of their Multicast End Users and Unicast End Users, and (b) the number of connections to each such Multicast End User and Unicast End User. A User that excludes an Affiliate from its list of Multicast End Users or Unicast End Users consistent with the proposed definitions may be required to certify to the Exchange the Affiliate status of such end user.[16] The Exchange proposes to revise the Price List and Fee Schedule accordingly.

Users that are not Rebroadcasting Users or Transmittal Users may be asked to certify as much to the Exchange.

Users may independently set fees that they charge Multicast End Users and Unicast End Users. The Exchange would not be a party to the contractual relationship between Rebroadcasting Users and Transmittal Users and their customers and would not receive a share of any fees charged by Rebroadcasting Users and Transmittal Users for their services.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a Member, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[17] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[18]

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[12] The proposed definition of Affiliate does not encompass two Multicast End Users or Unicast End Users. Accordingly, if a Rebroadcasting User or Transmittal User had two Multicast End Users or Unicast End Users, respectively, that were under common control or one controlled the other, they would be treated as two end users for purposes of the proposed fees.

[13] For example, if a Multicast End User had an issue such as a loss of connection to the multicast service or dropping packets of data (*i.e.* portions of the data are dropped), the Exchange would work with the Rebroadcasting User to determine the issue and, if it was related to Exchange services, remedy it.

[14] The Exchange notes that in its experience not all Users have detailed monitoring for their networks, and some Rebroadcasting Users and Transmittal Users do not troubleshoot within their own networks to see where the cause lies before asking the Exchange for support.

[15] By comparison, as noted above, when the Exchange provides support to a Rebroadcasting User or Transmittal User regarding issues related to its Multicast or Unicast End Users, the Exchange works with as many separate entities as there are parties involved.

[16] The Exchange may review available information regarding the Affiliate status of an end user and reserves the right to request additional information to verify the Affiliate status of such entity. The Exchange would approve a request to exclude an Affiliate unless it determines that the certification is not accurate. The Exchange believes that this procedure is consistent with the certification procedures relating to its Partial Cabinet Solution bundles. *See* Exchange Act Release No. 76613, *supra* note 11, at 7384.

Technical Change

Finally, the Exchange proposes to delete the obsolete text in the Price List and Fee Schedule related to the Hosting Fee of $500 per Hosted Customer that was in effect until December 31, 2015. In addition, the Exchange proposes to delete the "Effective January 1, 2016" text that precedes the current description of the $1,000 monthly charge per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted because it is no longer necessary as these fees are current fees.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[20] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Overall, the Exchange believes that the proposed change is consistent with the Act because the Exchange offers the co-location services described herein as a convenience to Users, but in so doing incurs certain costs, including costs related to the Data Center facility, hardware and equipment and costs related to personnel required for installation and ongoing monitoring, support and maintenance of such services.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Co-location services would continue to be offered by the Exchange in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

In addition, the proposed end user fees would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users.

In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed fees are reasonable in that they are designed to defray applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs, such as the costs of maintaining multiple connections with multiple providers. The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established.

Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End Users and Unicast End Users, respectively. The Exchange believes that the proposed higher fees proposed in connection with the multicast format are reasonable because they reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

In addition, based on its experience, the Exchange believes that the proposed fees are reasonable in that, as a general matter, the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users. The Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively. Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.

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[17] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[18] *See* Exchange Act Release No. 70176, *supra* note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSE–2015–11 and SR–NYSEArca–2015–19.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable to charge Rebroadcasting Users and Transmittal Users the proposed fees irrespective of whether their Multicast or Unicast End User is a User, because the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users that are outside of co-location as well as those that are Users. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assess related to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

In addition, the Exchange believes that it is reasonable to charge the same amount for one or two connections because it would encourage Users and their customers to establish two connections and thereby create redundancy in the connections.

The Exchange believes that the proposed amendments to the definition of Affiliates regarding the control relationship are reasonable because they would make the definition more accessible and transparent and provide market participants with clarity as to what entities are considered Affiliates, ensuring that Users exclude all possible Affiliates from the proposed fees and the existing fees for Partial Cabinet Solution bundles. The Exchange believes that setting the common ownership or control threshold in the definition of Affiliates of Multicast End Users and Unicast End Users at 50% is reasonable because it is the same threshold as in the current definition of Affiliates.

Expanding the definition of Affiliates, adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User, and adding the proposed note on the reporting requirements to the Price List and Fee Schedule would make such definitions and requirements accessible and transparent and provide market participants with clarity as to the application of the proposed fees.. The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by including the definitions and reporting requirements in the Price List and Fee Schedule, the proposed change would provide all Users with clarity as to the availability and application of co-location services and fees. Such end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that excluding Affiliates from the definitions of Multicast End Users and Unicast End Users is reasonable because, in its experience, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange's administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting multicast or unicast data to a Multicast End User or Unicast End User, respectively. In its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved.

The Exchange believes that having the definition of Affiliates encompass non-Users is reasonable because in its experience entities that are Affiliates typically act as one entity irrespective of whether one or more of them are not Users. If the definition did not encompass non-Users, a User would have to pay the proposed fee if it rebroadcast or transmitted multicast or unicast data to an end user that was not a User but otherwise met the definition of Affiliate. However, the Exchange would incur the same costs irrespective of whether the end user is itself a User or is located outside of co-location. Accordingly, the Exchange believes that having the definition of Affiliates encompass non-Users avoids disparate treatment of a Rebroadcasting User or Transmittal User that has a non-User as its Affiliate, as compared to one that has a User as its Affiliate.

The Exchange believes that it is reasonable that, under the proposed definition, two Multicast End Users or Unicast End Users would not be considered Affiliates even if they otherwise met the requirements of the definition. The Exchange has no direct contract with a Rebroadcasting User's Multicast End Users for connectivity to Exchange data, or with a Transmittal User's Unicast End Users for the transmission of messages to and from the Exchange. As a result, the Exchange would not be able to independently ascertain which Multicast and Transmittal Users met the definition of Affiliates, and would have no standing to require such Multicast and Unicast End Users to report their Affiliates. The Exchange believes it would create an unnecessary administrative burden on Users to require Rebroadcasting Users and Transmittal Users to determine which, if any, of their Multicast and Unicast End Users were affiliated, and to report such to the Exchange.

The Exchange believes that the proposal to exclude Affiliates from the definitions of Multicast End User and Unicast End User is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have divided their various business activities among separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. In addition, the inclusion of non-Users in the definition of Affiliates is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have Affiliates that are not Users, as compared to Users whose Affiliates are all Users.

The Exchange believes that the proposal to exclude from the definition of Multicast End Users a User that normalizes raw data before rebroadcasting it to its customers is reasonable and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because a User that normalizes and then rebroadcasts normalized data acts as the source of the feed, and so does not need the Exchange's assistance if an issue arises with its normalized feed. As a result, the Exchange does not incur the same costs in relation to end users of normalized data as it does in relation to Multicast End Users.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage sending orders to Floor brokers for execution, thereby encouraging additional displayed liquidity on the Exchange. This would encourage the execution of transactions on a public registered exchange, thereby promoting public price discovery—an objective fully consistent with the Act.[22] The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders to the Floor for execution, thereby contributing to robust levels of liquidity on the Floor, which benefits all market participants.

The Exchange believes that the proposal to have Users report the number of their Multicast End Users and Unicast End Users and the number of connections to each such Multicast End User and Unicast End User is reasonable because it will ensure that the proposed fees are assessed accurately and will provide market participants with clarity as to how the fees will be assessed.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the Data Center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users). The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections.

In addition, the Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because they would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users, as well as applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users. In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has tailored the proposed definition of Affiliate to include User and non-User Affiliates. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assessed relating to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has excluded Affiliates from the proposed definitions of Multicast End Users and Unicast End Users. As a result, the proposed end user fees exclude fees related to end users that, in the Exchange's experience, typically act as one entity, with one infrastructure and one administration.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage providing liquidity on the Exchange, thereby contributing to the Exchange's competitiveness with other markets. In addition, the Exchange believes that expanding the definition of Affiliates and adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User to the Price List and Fee Schedule would make such definitions accessible and transparent and provide market participants with clarity as to the availability and application of the proposed fees.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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[22] *See* Exchange Act Release No. 73333 (October 9, 2014), 79 FR 62223 (October 16, 2014) (SR–NYSE–2014–32 and SR–NYSEMKT–2014–56) ("The Commission also notes that . . . the ALO limit order is designed to provide displayed liquidity to the market and thereby contribute to public price discovery—an objective that is fully consistent with the Act"); *see also* 15 U.S.C. 78k–1(a)(1)(c)(iii) and (iv) (objectives for the national market system include assuring the availability of information with respect to quotations in securities and the practicability of brokers executing investors' orders in the best market).

[23] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–15, and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09321 Filed 4–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77642; File No. SR–NYSE–2016–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as Well as Amending the Exchange's Price List To Reflect the Changes

April 18, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 4, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish fees relating to end users and amend the definition of "affiliate," as well as to amend the co-location section of the Exchange's Price List to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission ("Commission"). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish fees relating to certain end users and amend the definition of "affiliate," as well as to amend the co-location[4] section of its Price List to reflect the changes. The Exchange proposes that the changes be effective the first of the month following approval by the Securities and Exchange Commission.

Information flows over existing network connections in two formats:

- Multicast format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast; and
- Unicast format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

Fees for Rebroadcasting Users Related to Their Multicast End Users

As a general matter, market data is broadcast to Users[5] in multicast format. Users can rebroadcast data they receive in multicast format to their customers[6] if they choose. The Exchange proposes to add to its co-location Price List definitions of a "Rebroadcasting User" and a "Multicast End User."

> A "Rebroadcasting User" would be a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers.
>
> A "Multicast End User" would be a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User. A Multicast End User may be, but is not required to be, another User or a Hosted Customer.

The Exchange proposes that a User that normalizes raw market data before sending it to its customers would not be a "Rebroadcasting User." Such normalized data is altered before rebroadcasting, and is no longer in the form received from the Exchange. For example, a User may opt to normalize the raw data distributed by the Exchange and its affiliates by altering it to put it in viewable or algorithmic form, such as by putting it though a feed handler. In addition, the Exchange proposes that a User that rebroadcasts data received from third parties would not be a "Rebroadcasting User," as the data would not be received from the Exchange.

A Rebroadcasting User may have more than one connection to a single Multicast End User. The multicast format permits a Multicast End User to rebroadcast the data received. Each of such customers is also considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[7]

The Exchange proposes to charge Rebroadcasting Users fees relating to each Multicast End User as follows:

- If the Rebroadcasting User has one or two connections, either directly or through another Multicast End User, to a Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge.
- If the Rebroadcasting User has more than two connections to a Multicast End User, either directly or through another Multicast End User, the Rebroadcasting User would be subject to a $1,700 monthly charge for the first two connections (in the aggregate) and $850 for each additional connection.[8]

Fees for Transmittal Users Related to Their Unicast End Users

Messages, such as those to send an order or related to clearing a trade, are transmitted in unicast format. A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange. For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. The Exchange proposes to add to its co-location Price List definitions of a "Transmittal User" and a "Unicast End User."

> A "Transmittal User" would be a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.
>
> A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker. a Unicast End User may be, but is not required to be, a User or a Hosted Customer.

A Transmittal User may establish more than one connection for a single Unicast End User. The unicast format permits a Unicast End User to enable one or more of its customers to transmit messages to and from the Unicast End User. Each of such customers is also considered a Unicast End User.[9]

The Exchange proposes to charge Transmittal Users fees relating to each Unicast End User as follows:

- If the Transmittal User has one or two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge.
- If the Transmittal User has more than two connections to the Unicast End User, either directly or through another Unicast End User, the Transmittal User would be subject to a $1,500 monthly charge for the first two connections (in the aggregate) and $750 for each additional connection.[10]

If a Transmittal User's customer sends all unicast transmissions through a floor participant, such as a floor broker, that customer would not be considered a Unicast End User even if such customer is enabled to use unicast communications. Accordingly, the Transmittal User would not be charged with respect to its connection to such customer.

A User may be both a Rebroadcasting User and a Transmittal User.

Definition of Affiliate

The proposed fees would not apply to a Multicast End User that is an "Affiliate" of a Rebroadcasting User or a Unicast End User that is an "Affiliate" of a Transmittal User.

Presently, for purposes of co-location fees the "Affiliate" of a User is defined as "any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User."[11] The Exchange proposes to revise the definition of "Affiliate" for clarity and to include Affiliates of Multicast and Unicast End Users. The proposed definition would be as follows:

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[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] As used in the context of the proposed fees, the term "customer" refers to any person who has a contractual relationship with a User or the customer of a User for the provision to that customer of unicast or multicast services. A customer of a User may include another User or a "Hosted Customer," as that term is defined in the Price List.

[7] The Exchange is not aware of any customer of a Multicast End User that rebroadcasts data, but if such a relationship did exist, the customer would also be considered a Multicast End User.

[8] For example, if a Rebroadcasting User has three connections to one Multicast End User, the Rebroadcasting User would be charged $2,550 per month with respect to such Multicast End User: $1,700 per month for the first two connections plus $850 per month for the third connection. If a Rebroadcasting User has one connection to a Multicast End User that itself has three customers that are also Multicast End Users, each with one or two connections, the Exchange would charge the Rebroadcasting User $6,800 per month, that is, $1,700 per month for each Multicast End User.

[9] The Exchange is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User.

[10] For example, if a Transmittal User has three connections to one Unicast End User, the Transmittal User would be charged $2,250 per month with respect to such Unicast End User: $1,500 per month plus $750 per month. If a Transmittal User has one connection to a Unicast End User that itself has three customers that are also Unicast End Users, each with one or two connections, the Exchange would charge the Transmittal User $6,000 per month, that is, $1,500 per month for each Unicast End User.

[11] The Exchange added a definition of "Affiliate" for co-location fees in connection with its partial cabinet solution bundles. *See* Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

> An "Affiliate" of a User is any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User. For purposes of this definition, "control" means ownership or control of 50% or greater.

The Exchange proposes to amend the current definition of Affiliate to clarify that the control relationship does not exist only when a User or Hosted Customer is under the common ownership or control of the first User. Instead, an Affiliate relationship exists whenever the two entities are under common control and irrespective of which entity controls the other. In addition, the Exchange proposes to move the description of what "control" means to the end of the definition, to allow for addition of the definitions of Affiliate of Rebroadcasting Users and Transmittal Users.[12]

By using the same concept of "control" for the definitions of Affiliate of Rebroadcasting Users and Transmittal Users as for the general definition, the Exchange believes that the expanded definition would be consistent in its application across the co-location related fees.

Support for Rebroadcasting Users and Transmittal Users

The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established. Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End Users and Unicast End Users, respectively. The higher fees proposed in connection with the multicast format reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

Based on its experience, the Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively.[13] Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.[14] As a result, as a general matter the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users.

By contrast, in its experience the Exchange has found that entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved. As a result, its administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting to a Multicast End User or Unicast End User, respectively.[15] In the Exchange's experience, this is true irrespective of whether the Affiliate end user is itself a User or is located outside of co-location. Accordingly, the Exchange proposes to exclude Affiliates, including those Affiliates that are not Users, from the definitions of Multicast End Users and Unicast End Users.

The Exchange does not provide network support for end users that receive normalized data. Because the normalized data is altered, the User that normalizes and then rebroadcasts normalized data acts as the source of the feed. As a result the User does not need the Exchange's assistance if an issue arises with its normalized feed. Accordingly, the Exchange proposes to exclude a User that normalizes data from the definition of Rebroadcasting User.

Rebroadcasting Users and Transmittal Users need network support, and the Exchange provides it, irrespective of whether their Multicast or Unicast End Users are Users. For this reason, the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users both inside and outside of co-location. Accordingly, the Exchange proposes not to limit the definitions of Multicast End Users and Unicast End Users to end users that are also Users.

Rebroadcasting User and Transmittal User Reporting

In order to assess the proposed fees accurately, the Exchange proposes that Rebroadcasting Users and Transmittal Users be required to report the following to the Exchange on a monthly basis: (a) The number of their Multicast End Users and Unicast End Users, and (b) the number of connections to each such Multicast End User and Unicast End User. A User that excludes an Affiliate from its list of Multicast End Users or Unicast End Users consistent with the proposed definitions may be required to certify to the Exchange the Affiliate status of such end user.[16] The Exchange proposes to revise the Price List accordingly.

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[12] The proposed definition of Affiliate does not encompass two Multicast End Users or Unicast End Users. Accordingly, if a Rebroadcasting User or Transmittal User had two Multicast End Users or Unicast End Users, respectively, that were under common control or one controlled the other, they would be treated as two end users for purposes of the proposed fees.

[13] For example, if a Multicast End User had an issue such as a loss of connection to the multicast service or dropping packets of data (*i.e.*, portions of the data are dropped), the Exchange would work with the Rebroadcasting User to determine the issue and, if it was related to Exchange services, remedy it.

[14] The Exchange notes that in its experience not all Users have detailed monitoring for their networks, and some Rebroadcasting Users and Transmittal Users do not troubleshoot within their own networks to see where the cause lies before asking the Exchange for support.

[15] By comparison, as noted above, when the Exchange provides support to a Rebroadcasting User or Transmittal User regarding issues related to its Multicast or Unicast End Users, the Exchange works with as many separate entities as there are parties involved.

[16] The Exchange may review available information regarding the Affiliate status of an end user and reserves the right to request additional information to verify the Affiliate status of such entity. The Exchange would approve a request to

Users that are not Rebroadcasting Users or Transmittal Users may be asked to certify as much to the Exchange.

Users may independently set fees that they charge Multicast End Users and Unicast End Users. The Exchange would not be a party to the contractual relationship between Rebroadcasting Users and Transmittal Users and their customers and would not receive a share of any fees charged by Rebroadcasting Users and Transmittal Users for their services.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a Member, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[17] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[18]

Technical Change

Finally, the Exchange proposes to delete the obsolete text in the Price List related to the Hosting Fee of $500 per Hosted Customer that was in effect until December 31, 2015. In addition, the Exchange proposes to delete the "Effective January 1, 2016" text that precedes the current description of the $1,000 monthly charge per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted because it is no longer necessary as these fees are current fees.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[20] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Overall, the Exchange believes that the proposed change is consistent with the Act because the Exchange offers the co-location services described herein as a convenience to Users, but in so doing incurs certain costs, including costs related to the Data Center facility, hardware and equipment and costs related to personnel required for installation and ongoing monitoring, support and maintenance of such services.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Co-location services would continue to be offered by the Exchange in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

In addition, the proposed end user fees would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users. In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed fees are reasonable in that they are designed to defray applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs, such as the costs of maintaining multiple connections with multiple providers. The Exchange incurs expenses and expends resources in connection with the support of Rebroadcasting Users and Transmittal Users. Some such costs are indirect, including those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established. Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased number of services available to Users, including Rebroadcasting and Transmittal Users, which, in turn, has increased the administrative and operational costs associated with delivery by Rebroadcasting Users and Transmittal Users to their Multicast End

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exclude an Affiliate unless it determines that the certification is not accurate. The Exchange believes that this procedure is consistent with the certification procedures relating to its Partial Cabinet Solution bundles. *See* Exchange Act Release No. 77072, *supra* note 11, at 7396.

[17] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[18] *See* Securities Exchange Act Release No. 70206, *supra* note 5 at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change. *See* SR–NYSEMKT–2015–15 and SR–NYSEArca–2015–19.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(4).

Users and Unicast End Users, respectively. The Exchange believes that the proposed higher fees proposed in connection with the multicast format are reasonable because they reflect the Exchange's experience that there are higher maintenance costs associated with supporting and rebroadcasting the multicast format, largely due to bandwidth requirements.

In addition, based on its experience, the Exchange believes that the proposed fees are reasonable in that, as a general matter, the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users and Transmittal Users than other Users. The Exchange generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support for the services that Rebroadcasting Users and Transmittal Users provide their Multicast End Users and Unicast End Users, respectively. Typically when an issue arises, the Exchange and the applicable Rebroadcasting User or Transmittal User would conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.

The Exchange believes that it is reasonable to charge Rebroadcasting Users and Transmittal Users the proposed fees irrespective of whether their Multicast or Unicast End User is a User, because the Exchange provides Rebroadcasting Users and Transmittal Users support related to their Multicast and Unicast End Users that are outside of co-location as well as those that are Users. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assessed related to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

In addition, the Exchange believes that it is reasonable to charge the same amount for one or two connections because it would encourage Users and their customers to establish two connections and thereby create redundancy in the connections.

The Exchange believes that the proposed amendments to the definition of Affiliates regarding the control relationship are reasonable because they would make the definition more accessible and transparent and provide market participants with clarity as to what entities are considered Affiliates, ensuring that Users exclude all possible Affiliates from the proposed fees and the existing fees for Partial Cabinet Solution bundles. The Exchange believes that setting the common ownership or control threshold in the definition of Affiliates of Multicast End Users and Unicast End Users at 50% is reasonable because it is the same threshold as in the current definition of Affiliates.

Expanding the definition of Affiliates, adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User, and adding the proposed note on the reporting requirements to the Price List would make such definitions and requirements accessible and transparent and provide market participants with clarity as to the application of the proposed fees. The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by including the definitions and reporting requirements in the Price List, the proposed change would provide all Users with clarity as to the availability and application of co-location services and fees. Such end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that excluding Affiliates from the definitions of Multicast End Users and Unicast End Users is reasonable because, in its experience, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange's administrative burden and operational costs are reduced in comparison to when it supports a Rebroadcasting User or Transmittal User rebroadcasting or transmitting multicast or unicast data to a Multicast End User or Unicast End User, respectively. In its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group. Accordingly, when the Exchange provides network support to a User rebroadcasting or transmitting multicast or unicast data to Affiliate end users, the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved.

The Exchange believes that having the definition of Affiliates encompass non-Users is reasonable because in its experience entities that are Affiliates typically act as one entity irrespective of whether one or more of them are not Users. If the definition did not encompass non-Users, a User would have to pay the proposed fee if it rebroadcast or transmitted multicast or unicast data to an end user that was not a User but otherwise met the definition of Affiliate. However, the Exchange would incur the same costs irrespective of whether the end user is itself a User or is located outside of co-location. Accordingly, the Exchange believes that having the definition of Affiliates encompass non-Users avoids disparate treatment of a Rebroadcasting User or Transmittal User that has a non-User as its Affiliate, as compared to one that has a User as its Affiliate.

The Exchange believes that it is reasonable that, under the proposed definition, two Multicast End Users or Unicast End Users would not be considered Affiliates even if they otherwise met the requirements of the definition. The Exchange has no direct contract with a Rebroadcasting User's Multicast End Users for connectivity to Exchange data, or with a Transmittal User's Unicast End Users for the transmission of messages to and from the Exchange. As a result, the Exchange would not be able to independently ascertain which Multicast and Transmittal Users met the definition of Affiliates, and would have no standing to require such Multicast and Unicast End Users to report their Affiliates. The Exchange believes it would create an unnecessary administrative burden on Users to require Rebroadcasting Users and Transmittal Users to determine which, if any, of their Multicast and Unicast End Users were affiliated, and to report such to the Exchange.

The Exchange believes that the proposal to exclude Affiliates from the definitions of Multicast End User and Unicast End User is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have divided their various business activities among separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. In addition, the inclusion of non-Users in the definition of Affiliates is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because the proposed rule avoids disparate treatment of Users that have Affiliates that are not Users, as compared to Users whose Affiliates are all Users.

The Exchange believes that the proposal to exclude from the definition of Multicast End Users a User that normalizes raw data before rebroadcasting it to its customers is reasonable and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers because a User that normalizes and then rebroadcasts normalized data acts as the source of the feed, and so does not need the Exchange's assistance if an issue arises with its normalized feed. As a result, the Exchange does not incur the same costs in relation to end users of normalized data as it does in relation to Multicast End Users.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage sending orders to Floor brokers for execution, thereby encouraging additional displayed liquidity on the Exchange. This would encourage the execution of transactions on a public registered exchange, thereby promoting public price discovery—an objective fully consistent with the Act.[22] The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders to the Floor for execution, thereby contributing to robust levels of liquidity on the Floor, which benefits all market participants.

The Exchange believes that the proposal to have Users report the number of their Multicast End Users and Unicast End Users and the number of connections to each such Multicast End User and Unicast End User is reasonable because it will ensure that the proposed fees are assessed accurately and will provide market participants with clarity as to how the fees will be assessed.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the Data Center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same range of products and services are available to all Users). The proposed end user-related definitions, fees and reporting requirements would be applied uniformly to all Users providing multicast and unicast connections.

In addition, the Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because they would fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users, as well as applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users and Transmittal Users. In the absence of the proposed end user fees, no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from these services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has tailored the proposed definition of Affiliate to include User and non-User Affiliates. If the proposed fees were limited to Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users, no charges would be assessed relating to the benefit that end users outside of co-location received from these services through the rebroadcasting or transmitting User from whom they received data. As a result, the Rebroadcasting Users and Transmittal Users whose Multicast or Unicast End Users were themselves Users would support a disproportionate share of the Exchange's administrative burden and operational costs relating to end users, and the rebroadcasting or transmitting Users would receive disproportionate benefits.

The Exchange believes that the proposed end user fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange has excluded Affiliates from the proposed definitions of Multicast End Users and Unicast End Users. As a result, the proposed end user fees exclude fees related to end users that, in the Exchange's experience, typically act as one entity, with one infrastructure and one administration.

The Exchange believes that the proposal to exclude from the definition of Unicast End User those customers of a Transmittal User (and customers of Users' customers) that send all orders to a Floor broker for representation on the Exchange is reasonable because it would encourage providing liquidity on the Exchange, thereby contributing to the Exchange's competitiveness with other markets. In addition, the Exchange believes that expanding the definition of Affiliates and adding the definitions of Multicast End User, Rebroadcasting User, Unicast End User, and Transmittal User to the Price List would make such definitions accessible and transparent and provide market participants with clarity as to the availability and application of the proposed fees.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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[22] *See* Exchange Act Release No. 73333 (October 9, 2014), 79 FR 62223 (October 16, 2014) (SR–NYSE–2014–32 and SR–NYSEMKT–2014–56) ("The Commission also notes that . . . the ALO limit order is designed to provide displayed liquidity to the market and thereby contribute to public price discovery—an objective that is fully consistent with the Act"); *see also* 15 U.S.C. 78k–1(a)(1)(c)(iii) and (iv) (objectives for the national market system include assuring the availability of information with respect to quotations in securities and the practicability of brokers executing investors' orders in the best market).

[23] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–11, and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09323 Filed 4–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15a–6, SEC File No. 270–0329, OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15a–6 provides conditional exemptions from the requirement to register as a broker-dealer pursuant to Section 15 of the Exchange Act (15 U.S.C. 78o) for foreign broker-dealers that engage in certain specified activities involving U.S. persons. In particular, Rule 15a–6(a)(3) provides an exemption from broker-dealer registration for foreign broker-dealers that solicit and effect transactions with or for U.S. institutional investors or major U.S. institutional investors through a registered broker-dealer, provided that the U.S. broker-dealer, among other things, obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the registered broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities. Commission staff estimates that approximately 2,000 U.S. registered broker-dealers will spend an average of two hours of clerical staff time and one hour of managerial staff time per year obtaining the information required by the rule, resulting in a total aggregate burden of 6,000 hours per year for complying with the rule. Assuming an hourly cost of $63 [1] for a compliance clerk and $269 [2] for a compliance manager, the resultant total internal labor cost of compliance for the respondents is $818,000 per year (2,000 entities × ((2 hours/entity × $63/hour) + (1 hour per entity × $283/hour)) = $818,000).

In general, the records to be maintained under Rule 15a–6 must be kept for the applicable time periods as set forth in Rule 17a–4 (17 CFR 240.17a–4) under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a–6 is voluntary, but if a foreign broker-dealer elects to rely on such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information.

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[24] 17 CFR 200.30–3(a)(12).

[1] The hourly rate used for a compliance clerk was from SIFMA's *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1,800 hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[2] The hourly rate used for a compliance manager was from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09359 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 204A–1, SEC File No. 270–536, OMB Control No. 3235–0596.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 204A–1 (17 CFR 275.204A–1) under the Investment Advisers Act of 1940." (15 U.S.C. 80b–1 *et seq.*) Rule 204A–1 (the "Code of Ethics Rule") requires investment advisers registered with the SEC to (i) set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws); (ii) safeguard material nonpublic information about client transactions; and (iii) require the adviser's "access persons" to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The Code of Ethics Rule requires access persons to obtain the adviser's approval before investing in an initial public offering ("IPO") or private placement. The Code of Ethics Rule also requires prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the Code of Ethics Rule requires the adviser to provide each supervised person with a copy of the code of ethics and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements are to (i) ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) provide advisory clients with information with which to evaluate advisers' codes of ethics; and (iv) assist the Commission's examination staff in assessing the adequacy of advisers' codes of ethics and assessing personal trading activity by advisers' supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A–1 imposes a burden of approximately 118 hours per adviser annually based on an average adviser having 84 access persons. Our latest data indicate that there were 12,028 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of 1,418,703 hours for this collection of information.

Rule 204A–1 does not require recordkeeping or record retention. The collection of information requirements under the rule is mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09358 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77636; File No. SR-BatsEDGX–2016–12]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 14.10 Setting Forth Additional Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

April 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Exchange Rule 14.10 setting forth additional requirements for the listing of securities that are issued by the Exchange or any of its affiliates as well as the monitoring of such securities' trading activity on the Exchange. Proposed Rule 14.10 is based on Bats BZX Exchange, Inc. ("BZX") Rule 14.3(e), which was recently amended and filed for immediate effectiveness with the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt Rule 14.10 setting forth reporting requirements on the Exchange should the Exchange or EDGX Affiliate list a security on the Exchange (the "Affiliate Security"). Proposed Rule 14.10(a)(1) would define "EDGX Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where 'control' means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." Proposed Rule 14.10(a)(2) would define "Affiliate Security" as "any security issued by an EDGX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depositary Receipts as defined in Rule 14.8(d) and Investment Company Units as defined in Rule 14.2."[6]

In the event that an EDGX Affiliate seeks to list an Affiliate Security, paragraph (b)(1) of proposed Rule 14.10 would require that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors.

Proposed paragraph (b)(2) of proposed Rule 14.10 would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors and that such report describe the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards. Sub-paragraph (A) of proposed Rule 14.10(b)(2) would require the report include a description of the Affiliate Security's compliance with the Exchange's minimum share price requirement, and, sub-paragraph (B) would require the report to describe the Affiliate Security's compliance with each of the quantitative continued listing requirements.

Sub-paragraph (3) of proposed Rule 14.10(b) would require the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange would be required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors.

Sub-paragraph (4) of proposed Rule 14.10(b) would state that in the event the Exchange determines that the EDGX Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange would also be required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report would identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange would again be required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

Sub-paragraph (c) of proposed Rule 14.10 would require that throughout the trading of an Affiliate Security on the Exchange, the Exchange prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

Lastly, paragraph (d) of proposed Rule 14.10 would require the Exchange to promptly provide a copy of the reports required by sub-paragraphs (b) and (c) described above to the Commission.

The listing of an Affiliate Security or where an Affiliate Security is traded on the Exchange could potentially create a conflict of interest between the Exchange's self-regulatory responsibility to vigorously oversee the listing and trading of the stock on its market, and its own commercial or economic interests. Such "self-listing" may raise questions as to the Exchange's ability to independently and effectively enforce its rules against an affiliate or the operator/owner of its facility. In addition, such listing has the potential to exacerbate possible conflicts that may arise when the Exchange oversees competitors that may also be listed or traded on the Exchange. The Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to the Exchange's oversight of the listing and trading on the Exchange of any EDGX Affiliate Security, will help protect against any concern that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirements that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities and should help mitigate against any potential or actual conflicts of interest. The Exchange also believes that these additional requirements contained in the proposed rule change would provide additional assurance that any Affiliate Securities listed and traded on the Exchange by an EDGX Affiliate comply with the Exchange's listing standards and trading rules on an on-going basis. Finally, the Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if an EDGX Affiliate seeks to list a security on the Exchange or if an Affiliate Security is traded on the Exchange.

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* SR–BatsBZX–2016–08 (filed for immediate effectiveness on April 13, 2016). *See also* Securities Exchange Act Release No. 66580 (March 13, 2012), 77 FR 16110 (March 19, 2012) (SR–BATS–2012–012).

[6] The Exchange notes that BZX Rule 14.3(e)(1)(B) excludes Index Fund Shares as defined under BZX Rule 14.11(c). The Exchange rules do not currently define Index Fund Shares. Therefore, the Exchange proposes to exclude Investment Company Unit as defined under Exchange Rule 14.2 as it believes Investment Company Units to be synonymous with Index Fund Shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest. Further, the additional requirements contained in the proposed rule change would help to provide additional assurance: (i) That any Affiliate Securities listed on the Exchange by an EDGX Affiliate comply with the Exchange's listing standards both upon the initial listing of the EDGX Affiliate and on an on-going basis; and (ii) regarding the Exchange's monitoring of the trading of the Affiliate Security traded on the Exchange. The Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if an EDGX Affiliate seeks to list a security on the Exchange and where an Affiliate Security is traded on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather set forth the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or an Affiliate Security is traded on the Exchange. The Exchange further states that providing the reports required by the rule is in the best interest of investors and the public interest because it would provide greater transparency to market participants regarding the controls in place to address the potential conflicts of interest that may arise in the listing and trading of Affiliate Securities on the Exchange. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–12 and should be submitted on or before May 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09317 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Aldine Capital Fund II, L.P.; License No. 05/05–0310; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Aldine Capital Fund II, L.P., 30 West Monroe Street, Suite 710, Chicago, IL 60603, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which constitute Conflicts of Interest of the U.S. Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Aldine Capital Fund II, L.P. proposes to provide debt and equity financing to Rock Energy Systems, LLC, 1007 Church Street, Suite 420, Evanston, IL 60201.

The financing is brought within the purview of § 107.730(a) of the Regulations because Aldine SBIC Fund, L.P. and Aldine Capital Fund, L.P., Associates of Aldine Capital Fund II, L.P., hold an ownership interest in Rock Energy Systems, LLC of greater than 10 percent. Therefore, Rock Energy Systems, LLC is an Associate of Aldine Capital Fund II, L.P. and the transaction is considered financing an Associate. In addition, proceeds of this transaction will be used, in part, to discharge obligations to Associates Aldine SBIC Fund, L.P. and Aldine Capital Fund, L.P. Both characteristics of this transaction require prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

April 13, 2016.

Mark L. Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016–09312 Filed 4–21–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14696 and #14697]

Oklahoma Disaster #OK–00102

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of OKLAHOMA dated 04/13/2016.

Incident: Tornadoes, severe storms and straight-line winds.

Incident Period: 03/30/2016 through 04/01/2016.

Effective Date: 04/13/2016.

Physical Loan Application Deadline Date: 06/13/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 01/13/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Tulsa.

Contiguous Counties:

Oklahoma: Creek, Okmulgee, Osage, Pawnee, Rogers, Wagoner, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625

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[16] 17 CFR 200.30–3(a)(12).

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14696 B and for economic injury is 14697 0.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: April 13, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–09392 Filed 4–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14685 and #14686]

Mississippi Disaster Number MS–00084

AGENCY: U.S. Small Business Administration

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4268–DR), dated 03/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/09/2016 through 03/29/2016.

DATES: *Effective Date:* 04/15/2016.

Physical Loan Application Deadline Date: 05/24/2016.

EIDL Loan Application Deadline Date: 12/27/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of MISSISSIPPI, dated 03/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Tallahatchie.

Contiguous Counties: (Economic Injury Loans Only):
Mississippi: Grenada.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2016–09390 Filed 4–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14685 and #14686]

Mississippi Disaster Number MS–00084

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4268–DR), dated 03/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/09/2016 through 03/29/2016.

DATES: *Effective Date:* 04/13/2016.

Physical Loan Application Deadline Date: 05/24/2016.

EIDL Loan Application Deadline Date: 12/27/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Mississippi, dated 03/25/2016 is hereby amended to establish the incident period for this disaster as beginning 03/09/2016 and continuing through 03/29/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–09391 Filed 4–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14694 and #14695]

Illinois Disaster #IL–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ILLINOIS dated 04/13/2016.

Incident: Severe Storms and Flooding.

Incident Period: 12/23/2015 through 01/13/2016.

DATES: *Effective Date:* 04/13/2016.

Physical Loan Application Deadline Date: 06/13/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 01/13/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Christian Iroquois
Contiguous Counties:
Illinois: Ford, Kankakee, Macon, Montgomery, Sangamon, Shelby, Vermilion
Indiana: Benton, Newton

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.625
Homeowners without Credit Available Elsewhere	1.813
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14694 B and for economic injury is 14695 0.

The States which received an EIDL Declaration # are ILLINOIS and INDIANA.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: April 13, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–09389 Filed 4–21–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9531]

Department of State FY 2015 Service Contract Inventory

AGENCY: Department of State.

ACTION: Notice of release of the Department of State's FY 2015 Service Contract Inventory.

SUMMARY: Acting in compliance with Sec. 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of State is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventory. The FY 2015 Service Contract Inventory includes the Planned Analysis, and Summary, Detailed, and Supplement Reports. The FY 2014 Meaningful Analysis is also available.

The inventory was developed in accordance with guidance issued on November 5, 2010, December 19, 2011, November 25, 2014, and September 8, 2015 by the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP). The Department of State has posted its FY 2015 Service Contract Inventory and FY 2014 Meaningful Analysis at the following link: *https://csm.state.gov/content.asp?content_id=135&menu_id=68.*

DATES: The inventory is available on the Department's Web site as of April 14, 2016.

FOR FURTHER INFORMATION CONTACT: Marlon Henry, Management and Program Analyst, A/EX/CSM, 202–485–7210, *HenryMD@state.gov.*

Dated: April 18, 2016.

Marlon Henry,

Management and Program Analyst, A/EX/CSM, Department of State.

[FR Doc. 2016–09400 Filed 4–21–16; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 9534]

Culturally Significant Objects Imported for Exhibition Determinations: "Karel Appel: A Gesture of Color—Paintings and Sculptures, 1947–2004" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Karel Appel: A Gesture of Color—Paintings and Sculptures, 1947–2004," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, District of Columbia, from on or about June 18, 2016, until on or about September 18, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 18, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–09403 Filed 4–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9533]

Culturally Significant Object Imported for Exhibition Determinations: "Medieval Permanent Collection Galleries" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E. O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the object to be included in the exhibition "Medieval Permanent Collection Galleries," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Cleveland Museum of Art, Cleveland, Ohio, from on or about April 25, 2016, until on or about September 25, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 18, 2106.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–09402 Filed 4–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9532]

Culturally Significant Objects Imported for Exhibition Determinations: "Moholy-Nagy: Future Present" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E. O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Moholy-Nagy: Future Present," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about May 27, 2016, until on or about September 7, 2016, at The Art Institute of Chicago, Chicago, Illinois, from on or about October 2, 2016, until on or about January 3, 2017, at the Los Angeles County Museum of Art, Los Angeles, California, from on or about February 12, 2017, until on or about June 18, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a lists of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 18, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–09401 Filed 4–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9535]

Culturally Significant Objects Imported for Exhibition Determinations: "The Brothers Le Nain: Painters of Seventeenth-Century France" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E. O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "The Brothers Le Nain: Painters of Seventeenth-Century France," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on about May 22, 2016, until on or about September 11, 2016, at the Fine Arts Museums of San Francisco, Legion of Honor, San Francisco, California, from on or about October 8, 2016, until on or about January 29, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 18, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–09404 Filed 4–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–42]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2002–12455 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7626.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 15, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2002–12455.

Petitioner: Airlines for America.

Sections of 14 CFR Affected: 61.3(a) and (c); 63.3(a); and 121.383(a)(3).

Description of Relief Sought: Airlines for America (A4A) requests an amendment to Exemption No. 5487K. That exemption from §§ 61.3(a) and (c), 63.3(a), and 121.383(a)(2) allows an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system. With the flight deck becoming more and more paperless, A4A requests that the FAA allow the temporary confirmation to be provided through an electronic document.

[FR Doc. 2016–09327 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–41]

Petition for Exemption; Summary of Petition Received; William Nelson

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket FAA–2016–0030 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7626.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 15, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0030.

Petitioner: William Nelson.

Sections of 14 CFR Affected: 61.315(c)(6) and (11) and 91.215(b)(1).

Description of Relief Sought: William Nelson requests an exemption from §§ 61.315(c)(6) and (11) and 91.215(b)(1) to set a world altitude record in a powered parachute. The relief sought would allow the petitioner to act as pilot in command of a light-sport aircraft in Class A airspace, and at an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher, and allow operation of an aircraft in Class A, Class B, and Class C airspace areas without that aircraft being equipped with an operable coded radar beacon transponder.

[FR Doc. 2016–09329 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–48]

Petition for Exemption; Summary of Petition Received; Rotorcraft Leasing Co.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–5003 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the

West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso W. Pendergrass II (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 12, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–5003.

Petitioner: Rotorcraft Leasing Co.

Section(s) of 14 CFR Affected: § 135.160(a).

Description of Relief Sought: Rotorcraft Leasing Co. (RCL) is requesting an exemption to allow RCL to operate its 39 BHT model 206B, 206L1, L3, L4, and 407 helicopters without an operable FAA-approved radio altimeter or FAA-approved device that incorporates a radio altimeter after April 24, 2017 in accordance with § 135.160(a).

[FR Doc. 2016–09331 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–28]

Petition for Exemption; Summary of Petition Received; Precisionhawk

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–0363 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Joshua Parker, (202–267–1538), 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 15, 2016.

Dale A. Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0363.

Petitioner: PrecisionHawk, Inc.

Section(s) of 14 CFR Affected: 61.113, 91.119, 91.121 and 91.151

Description of Relief Sought: PrecisionHawk, Inc. seeks relief from the requirements of 14 CFR 61.113, 91.119, 91.121 and 91.151 to permit it to conduct small UAS (sUAS) operations extended visual line of sight as part of the FAA/PrecisionHawk UAS Focus Area Pathfinder program. The purpose of the Pathfinder program[1] is to allow low-altitude operations in the National Airspace System (NAS) beyond what is currently outlined in the sUAS Notice of Proposed Rulemaking (NPRM) in rural areas.

[FR Doc. 2016–09332 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Property Swap at Augusta State Airport in Augusta, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a property swap at Augusta State Airport in Augusta, ME.

The purpose of the land swap between the State of Maine (Airport Sponsor) and Dragon Products Company, Inc., to resolve a compliance issue. The 13 acre parcel is at the bottom of the slope on the departure end of RW 35, and lies approximately 300′ below the elevation of the end of the Runway. This portion of land is not considered useable for aeronautical purposes based upon its location and elevation. The parcel currently contains a pile of hardened concrete spoils placed there by Dragon Products Company, Inc. The solutions to mitigate this situation include removal of the spoils pile, which would be cost prohibitive, or release the land to Dragon Products Company, Inc. as part of an equal value parcel exchange. The State of Maine determined the parcel exchange as the best alternative. The parcel that Dragon has offered for exchange abuts the Augusta State Airport property on one side and City of Augusta property on another. The Offered Parcel would be advantageous to the State of Maine for potential non-aeronautical airport revenue generating purposes. The State of Maine would retain all avigation rights over both parcels.

DATES: Comments must be received on or before May 23, 2016.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

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[1] *https://www.faa.gov/uas/legislative_programs/pathfinders/.*

W 12–140, 1200 New Jersey Avenue SE., Washington, DC 20590

- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, Telephone 781–238–7618.

Issued in Burlington, Massachusetts, on April 14, 2016.

Bryon H. Rakoff,

Deputy Manager, Airports Division.

[FR Doc. 2016–09428 Filed 4–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–47]

Petition for Exemption; Summary of Petition Received; Delta Air Lines Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–0934 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso W. Pendergrass II, (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 12, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0934.

Petitioner: Delta Air Lines Inc.

Section(s) of 14 CFR Affected: § 91.9(a).

Description of Relief Sought: Delta Air Lines is requesting an exemption to allow Delta B737 pilots to operate approved tablet device Electronic Flight Bag (EFB) with Wi-Fi connection to access FAA approved web-based applications on the flight deck during non-critical phases of flight.

[FR Doc. 2016–09330 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–44]

Petition for Exemption; Summary of Petition Received; Delta Air Lines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–4676 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, (202) 267–9677, 800 Independence Avenue SW., Washington, DC, 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 14, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–4676.

Petitioner: Delta Air Lines, Inc.

Sections of 14 CFR Affected: 121.438; 121.652.

Description of Relief Sought: Delta Air Lines, Inc. requests an exemption to use a combined flight time for the Boeing 757 (B–757) and Boeing 767 (B–767) for compliance with §§ 121.438 and 121.652. This relief would only be applicable to pilots who are engaged in flying the related aircraft consisting of the B–757–200, B–757–300 and B–767–300 using a "classic" flight deck configuration.

[FR Doc. 2016–09325 Filed 4–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will hold a meeting on June 29, 2016, at the American Association of Airport Executives, 601 Madison Street, Alexandria, VA. The meeting will begin at 8:30 a.m. and end at 2:30 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 1 hour and 45 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The committee will not accept oral comments from the public for the open portion of the meeting. Those who plan to attend or wish additional information should contact Dr. Grant Huang, Acting Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov.* Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: April 19, 2016.

Rebecca Schiller Printz,

Advisory Committee Management Officer.

[FR Doc. 2016–09340 Filed 4–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: National Academic Affiliations Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2 that a meeting of the National Academic Affiliations Council will be held May 5, 2016–May 6, 2016 in the Office of Academic Affiliations (OAA) Conference Room, 1800 G Street NW., Suite 870, Washington, DC. The May 5, 2016 session will begin at 9:00 a.m. and end at 4:30 p.m. The May 6, 2016 session will begin at 9 a.m. and adjourn at 12:00 p.m. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On May 5, 2016, the Council will host two expert panels with representatives from veterans' service organizations and professional staff from the House and Senate Veterans' Affairs Committees. Following the expert panels, the Council will receive updates on the Graduate Medical Education (GME) expansion authorized by the 2014 Veterans Access, Choice, and Accountability (VACAA) Act; the progress towards the establishment of joint ventures with academic affiliates; the role of academic affiliates in the proposed VA tiered networks; and challenges involving the timely issuance of personal identity verification cards to trainees. In the afternoon, the Council will host a conversation with Dr. David A. Shulkin, the Under Secretary for Health. On May 6, 2016, the Council will receive updates on the Veterans Equitable Resource Allocation methodology, and VA policy guidance on Deferred Action for Childhood Arrivals. At the conclusion of the May 6, 2016 session, the VA Advisory Committee Management Office will provide an informational briefing to Council members. The Council will receive public comments from 4:15 p.m. to 4:30 p.m. on May 6, 2016 and again from 11:15 a.m. to 11:30 a.m. on May 6, 2016.

Interested persons may attend and present oral statements to the Council. A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to, *Steve.Trynosky@va.gov,* or by mail to Stephen K. Trynosky JD, MPH, MMAS, Designated Federal Officer, Office of Academic Affiliations (10A2D), 810 Vermont Avenue NW., Washington, DC 20420. Any member of the public wishing to attend or seeking additional information should contact Mr. Trynosky via email or by phone at (202) 461–6723. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo I.D. Please allow 15 minutes before the meeting begins for this process.

Dated: April 19, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–09378 Filed 4–21–16; 8:45 am]

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Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 490

National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA–2013–0054]

RIN 2125–AF54

National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM is the third in a series of three related NPRMs that together establishes a set of performance measures for State departments of transportation (State DOT) and Metropolitan Planning Organizations (MPO) to use as required by Moving Ahead for Progress in the 21st Century Act (MAP–21). The measures proposed in this third NPRM would be used by State DOTs and MPOs to assess the performance of the Interstate and non-Interstate National Highway System (NHS) for the purpose of carrying out the National Highway Performance Program (NHPP); to assess freight movement on the Interstate System; and to assess traffic congestion and on-road mobile source emissions for the purpose of carrying out the Congestion Mitigation and Air Quality Improvement (CMAQ) Program. This third performance measure NPRM also includes a discussion that summarizes all three of the national performance management measures proposed rules and the comprehensive regulatory impact analysis (RIA) to include all three NPRMs.

DATES: Comments must be received on or before August 20, 2016. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FHWA–2013–0020 by any one of the following methods:

Fax: 1–202–493–2251;

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identifier Number (RIN) for this rulemaking (2125–AF54). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical information: Francine Shaw Whitson, Office of Infrastructure, (202) 366–8028; for legal information: Anne Christenson, Office of Chief Counsel, (202) 366–0740, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA has published two additional NPRMs to establish the remaining measures required under 23 U.S.C. 150(c). The first performance measure NPRM proposed establishment of measures to carry out the Highway Safety Improvement Program (HSIP) and to assess serious injuries and fatalities, both in number and expressed as a rate, on all public roads. On March 15, 2016, FHWA published a final rule (FR Vol. 81 No. 50) covering the safety-related elements of the Federal-aid Highway Performance Measures Rulemaking. The second performance measure NPRM proposed establishment of performance measures to assess pavement and bridge conditions on the Interstate System and non-Interstate NHS for the purpose of carrying out the NHPP. This NPRM, the third performance measure NPRM, focuses on measures for the performance of the NHS, freight movement on the Interstate System, and the CMAQ Program.

This last NPRM includes a discussion that summarizes all three of the rulemakings, both finished and underway, that will establish the measures required under 23 U.S.C. 150(c).

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I. Executive Summary

a. Purpose of the Regulatory Action

The MAP–21 (Pub. L. 112–141) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. Performance management increases the accountability and transparency of the Federal-aid highway program and provides for a framework to support improved investment decisionmaking through a focus on performance outcomes for key national transportation goals. As part of performance management, recipients of Federal-aid highway funds would make transportation investments to achieve performance targets that make progress toward the following national goals:[1]

- Congestion reduction.—To achieve a significant reduction in congestion on the NHS.
- System reliability.—To improve the efficiency of the surface transportation system.
- Freight movement and economic vitality.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.
- Environmental sustainability.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.

The purpose of this rulemaking is to implement MAP–21 performance management requirements. Prior to MAP–21, there were no explicit requirements for State DOTs to demonstrate how their transportation program supported national performance outcomes. State DOTs were not required to measure condition/performance, to establish targets, to assess progress toward targets, or to report condition/performance in a nationally consistent manner that FHWA could use to assess the condition/performance of the entire system. Without States reporting on the above mentioned factors, it is difficult for FHWA to look at the effectiveness of the Federal-aid highway program as a means to address surface transportation performance at a national level.

This proposed rule is one of several rulemakings that DOT is or will be conducting to implement MAP–21's new performance management framework. The collective rulemakings will establish the regulations needed to more effectively evaluate and report on surface transportation performance across the country. This rulemaking proposes regulations that would:

- Provide for greater consistency in the reporting of condition/performance;
- Require the establishment of targets that can be aggregated at the national level;
- Require reporting in a consistent manner on progress achievement; and
- Require State DOTs to make significant progress.

State DOTs would be expected to use the information and data generated as a result of the new regulations to better inform their transportation planning and programming decisionmaking. The new performance aspects of the Federal-aid program that would result from this rulemaking would provide FHWA the ability to better communicate a national performance story and to more reliably assess the impacts of Federal funding investments. The FHWA is in the process of creating a new public Web site to help communicate the national performance story. The Web site will likely include infographics, tables, charts, and descriptions of the performance data that the State DOTs would be reporting to FHWA.

The FHWA is required to establish performance measures through a rulemaking to assess performance in 12 areas[2] generalized as follows: (1) Serious injuries per vehicle miles traveled (VMT); (2) fatalities per VMT; (3) number of serious injuries; (4) number of fatalities; (5) pavement condition on the Interstate System; (6) pavement condition on the non-Interstate NHS; (7) bridge condition on the NHS; (8) traffic congestion; (9) on-road mobile source emissions; (10) freight movement on the Interstate System; (11) performance of the Interstate System; and (12) performance of the non-Interstate NHS. This rulemaking is the third of three rulemakings that together, will establish the performance measures for State DOTs and MPOs to use to carry out Federal-aid highway programs and to assess performance in each of these 12 areas.

This rulemaking seeks to establish national measures for areas 8, 9, 10, 11, and 12, in the above list. This NPRM proposes to establish performance measures to assess the performance of the Interstate System and non-Interstate NHS for the purpose of carrying out the NHPP; to assess freight movement on the Interstate System; and to assess traffic congestion and on-road mobile source emissions for the purpose of carrying out the CMAQ program areas. The two proposed measures to assess performance of the Interstate are (1) Percent of the Interstate System providing for Reliable Travel, and (2) Percent of the Interstate System where peak hour travel times meet expectations. The two proposed measures to assess performance of the non-Interstate NHS are (1) Percent of the non-Interstate NHS providing for Reliable Travel and (2) Percent of the non-Interstate NHS where peak hour travel times meet expectations. The two proposed measures to assess freight movement on the Interstate System are (1) Percent of the Interstate System Mileage providing for Reliable Truck Travel Time, and (2) Percent of the Interstate System Mileage Uncongested. The proposed measure to assess traffic congestion is Annual Hours of Excessive Delay per Capita. Lastly, the proposed measure to assess on-road mobile source emissions is Total Tons of Emissions Reduced from CMAQ Projects for Applicable Criteria Pollutants and Precursors.

In addition, this NPRM builds on the framework of the previous performance rulemakings and the process proposed for State DOTs and MPOs to establish targets for each of the measures; the methodology to determine whether State DOTs have achieved or made significant progress toward their NHPP or National Highway Freight Program (NHFP) targets (targets for national measures areas 5, 6, 7, 10, 11, and 12, in the above list); and the process for State DOTs to use to report on progress toward achieving their targets.

b. Summary of the Major Provisions of the Regulatory Action in Question

The first performance rule established measures to be used by State DOTs to assess performance and to carry out the HSIP; the process for State DOTs and MPOs to use to establish safety targets; the methodology to determine whether State DOTs have achieved their safety targets; and the process for State DOTs to report on progress toward achieving their safety targets. The second performance rule proposed the establishment of performance measures to be use by State DOTs to assess the condition of pavements and bridges and to carry out the NHPP.

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[1] These areas are listed within 23 U.S.C. 150(c), which requires the Secretary to establish measures to assess performance, condition, or emissions.

[2] These areas are listed within 23 U.S.C. 150(c), which requires the Secretary to establish measures to assess performance or condition.

With this third rule, FHWA proposes the establishment of: Performance measures to be used by State DOTs and MPOs to assess performance of the Interstate System and non-Interstate NHS, traffic congestion, on-road mobile source emissions, and freight movement on the Interstate System; the process for State DOTs and MPOs to use to establish targets; the methodology to determine whether State DOTs have achieved or made significant progress toward their NHPP and NHFP performance targets; and the process for State DOTs to report on progress toward achieving their targets. This NPRM includes one general information area (Subpart A) that covers definitions, target establishment, reporting on progress, and how determinations would be made on whether State DOTs have achieved or made significant progress toward NHPP and NHFP targets. Subparts E through H propose performance measures in four areas: (1) National Highway Performance Program—Performance of the NHS covered in Subpart E; (2) Freight Movement on the Interstate System, covered in Subpart F; and two measures relating to the CMAQ Program: (3) Traffic Congestion covered in Subpart G, and (4) On-Road Mobile Source Emissions, covered in Subpart H.

The FHWA had proposed in the prior performance management NPRMs to establish one common effective date for its three performance measure final rules. While FHWA recognizes that one common effective date could be easier for State DOTs and MPOs to implement, the process to develop and implement all of the Federal-aid highway performance measures required in MAP–21 has been lengthy. It is taking more than 3 years since the enactment of MAP–21 to issue all three performance measure NPRMs (the first performance management NPRM was published on March 11, 2014; the second NPRM was published on January 5, 2015). Rather than waiting for all three rules to be final before implementing the MAP–21 performance measure requirements, FHWA has decided to phase in the effective dates for the three final rules for these performance measures so that each of the three performance measures rules will have individual effective dates. This allows FHWA and State DOTs to begin implementing some of the performance requirements much sooner than waiting for the rulemaking process to be complete for all the rules. The FHWA believes that individual implementation dates will also help State DOTs transition to performance based planning.

On March 15, 2016, FHWA published a final rule (FR Vol. 81 No. 50) covering the safety-related elements of the Federal-aid Highway Performance Measures Rulemaking. With the staggered effective dates, this Rule will be implemented in its entirety before the other two rules are finalized.

Based on the timing of each individual rulemaking, FHWA would provide additional guidance to stakeholders on how to best integrate the new requirements into their existing processes. Under this approach, FHWA expects that even though the implementation for each rule would occur after each final rule is published, implementation for the second and the third performance measure final rules would ultimately be aligned through a common performance period. In the second performance management measure NPRM, FHWA proposed that the first 4-year performance period would start on January 1, 2016. However, FHWA proposes in this NPRM that the first performance period would begin on January 1, 2018. This would align the performance periods and reporting requirements for the proposed measures in the second and third performance management measure NPRMs. The FHWA has placed on the docket a timeline that illustrates how this transition could be implemented.[3] However, FHWA seeks comment from the public on what an appropriate effective date(s) could be.

Contents of 23 CFR Part 490

This NPRM proposes to add to Subpart A general information applicable to all of 23 CFR part 490. This section includes requirements for data, target establishment, reporting on progress, and how to determine whether State DOTs have made significant progress toward achieving targets (for applicable measures). Subpart A also includes definitions and clarifies terminology associated with target establishment, reporting, and making significant progress for the performance measures specific to this NPRM. Subparts B, C and D were previously published in separate rulemaking documents.

Subpart B covered the proposed measures for the HSIP (RIN 2125–AF49); Subpart C proposed measures to assess pavement conditions on the NHS and the non-Interstate NHS (RIN 2125–AF53); and Subpart D proposed measures to assess bridge conditions on the NHS (RIN 2125–AF53).

Subpart E proposes a travel time reliability measure and a peak hour travel time measure to assess the performance of the Interstate System and non-Interstate NHS. Subpart F establishes a travel time reliability measure and a congestion measure to assess freight movement on the Interstate System. Subpart G proposes an excessive delay measure to assess traffic congestion to carry out the CMAQ program. Subpart H proposes measures that will be used to assess the reduction of the criteria pollutants and applicable precursors to carry out the CMAQ program.

Summary of 23 CFR Part 490, Subpart A

In section 490.101, FHWA proposes to add definitions for "attainment area," "criteria pollutant," "Highway Performance Monitoring Systems (HPMS)," "freight bottleneck," "full extent," "mainline highways," "maintenance area," "measure," "metric," "Metropolitan Planning Organization (MPO)," "National Ambient Air Quality Standards (NAAQS)," "National Performance Management Research Data Set (NPMRDS)," "nonattainment area," "non-urbanized area," "reporting segment," "target," "Transportation Management Area (TMA)," "Travel Time Data Set," "Travel Time Reliability," and "Travel Time Segment," which would be applicable to all subparts within Part 490.

In section 490.103, FHWA proposes data requirements that apply to more than one subpart in Part 490. Additional proposed data requirements unique to each subpart are included and discussed in each respective subpart. This section proposes the source of urbanized area boundaries as the most recent U.S. Decennial Census unless FHWA approves adjustments to the urbanized area. These boundaries are to be reported to HPMS. The boundaries in place at the time of the Baseline Performance Report are to apply to an entire performance period. Boundaries for the nonattainment and maintenance areas are proposed to be as designated and reported by the U.S. Environmental Protection Agency (EPA) for any of the criteria pollutants applicable under the CMAQ program. The FHWA is proposing that State DOTs and MPOs use the NPMRDS to calculate the travel time and speed related metrics (a metric means a quantifiable indicator of performance or condition that is used to develop the measures defined in this rule), unless more detailed and accurate travel time data exists locally and is approved by FHWA for use.

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[3] FHWA Sample MAP21 Rule Making Implementation and Reporting Dates.

The NPMRDS is a dataset based on actual, observed data collected from probes, such as cell phones, navigation units, and other devices, in vehicles that travel along the NHS roadways. The dataset includes travel time information collected from probes that is available at 5 minute intervals for all segments of the Interstate and NHS where probes were present. The advent of readily available vehicle-based probe travel time data in recent years has led to a transformation in information available to the traveler and the ability for State DOTs and MPOs to develop performance measures based on this data. Because travel time data on the entire NHS is available from actual measurements tied to a date, time, and location on specific roadway segments, measuring the performance of the system, freight movement, and monitoring traffic congestion can be much more accurate, widespread, and detailed. The availability of this data also provides the potential to undertake before and after evaluations of transportation projects and strategies. These data requirements are detailed in proposed section 490.103.

The FHWA is proposing State DOTs and MPOs coordinate to develop reporting segments that would be used as the basis for calculating and reporting metrics to FHWA for the measures proposed in Subparts E, F, and G to assess the performance of the NHS, freight movement on the Interstate System, and traffic congestion. It is proposed that these reporting segments must be submitted to FHWA no later than the November 1 before the beginning of each performance period, and the same segments be used for Subparts E, F, and G for the entire performance period.

In section 490.105, FHWA proposes the minimum requirements that would be followed by State DOTs and MPOs to establish targets for all measures identified in section 490.105(c), which includes proposed measures both in this performance management NPRM and the second performance management NPRM. These requirements are being proposed to implement the 23 U.S.C. 150(d) and 23 U.S.C. 134(h)(2) target establishment provisions to provide for consistency necessary to evaluate and report progress at a State, MPO, and national level, while also providing a degree of flexibility for State DOTs and MPOs.

In section 490.107, FHWA proposes the minimum requirements that would be followed by State DOTs and MPOs in the reporting targets for all proposed measures identified in both this performance management NPRM and the second performance management NPRM.

Section 490.109 proposes the method FHWA would use to determine if State DOTs have achieved or made significant progress toward their NHPP and NHFP targets. Significant progress would be determined by comparing the established target with the measured condition/performance associated with that target. If applicable, State DOTs would have the opportunity to discuss why targets were not achieved or significant progress was not made. For the NHPP and NHFP measures, if FHWA determines that a State DOT fails to make significant progress over each of the biennial performance reporting periods, then the State DOT is required to document in their next biennial performance report, though encouraged to document sooner, the actions they will undertake to achieve their targets.

Summary of Proposed Measures for This NPRM (Subparts E—H)

The NPRM gives details on specific measures, which are proposed to be added to four new Subparts of Part 490 that include:

Subpart E proposes two types of measures that reflect the *Travel Time Reliability* and *Peak Hour Travel Times* experienced by all traffic;

Subpart F proposes two measures that reflect the *Travel Time Reliability* and *Congestion* experienced by freight vehicles;

Subpart G proposes a measure that reflects the amount of *Excessive Delay* experienced by all traffic; and

Subpart H proposes a measure that reflects the *Emission Reduction* resulting through the delivery of projects.

Travel Time Reliability is being proposed to reflect the consistency in expected travel times when using the highway system by comparing the longer trips experienced by users to the amount of time they would normally expect the trip to take. In Subpart E, the NPRM proposes a reliability measure that compares the longer trip travel times to the time normally expected by the typical user of the roadway. The proposal assumes the system to be "reliable" when the longer travel times are no more than 50 percent higher than what would be normally expected by users. For example, the system would be perceived as unreliable when a 40 minute expected trip would take 60 or more minutes. This proposed measure of reliability only reflects the travel times experienced during the times when the system is used the most, which is proposed to be between the hours of 6:00 a.m. to 8:00 p.m. This reliability approach is proposed to establish a measure specific to the Interstate System and the non-Interstate NHS.

Subpart F proposes a reliability measure to reflect the consistency of travel times on the system as experienced by shippers and suppliers. In this case the measure is a comparison of the longest travel times as compared to the time normally expected for the trip to take. The measure considers travel occurring at all hours of the day since this measure is designed to represent the perception of shippers and suppliers. In addition, this proposed freight movement measure is limited to the reliability of the Interstate System. As with all vehicles, the system is considered to be unreliable when the longest trip takes 50 percent more time than what would be normally expected. "Longer" and "Longest" trip travel times are described in more detail in the discussions of Section 490.505 and 490.607.

Also in Subpart E, as a complement to the reliability measure, the NPRM proposes a measure that evaluates the travel times experienced by all traffic during peak hours of the day. In contrast to the reliability measure which focuses on travel time variability, the peak hour measure is designed to measure the travel time during certain peak hours during the day, and how that compares to the desired travel time for that roadway at that time of day. The desired travel time is defined by the State DOT and MPO. It is expected that the desired time would be based on an analysis of how the roadway operates, its design features, any policy considerations, and how it functions within the larger system. As discussed previously, reliability reflects the consistency of trip time durations (*e.g.,* A user makes a trip every morning that consistently takes 30 minutes). The peak hour travel time measure reflects the actual length of the trip compared to the desired travel time for that trip (*e.g.,* Is the 30 minute trip duration too long for the time of day and the design of the roadway?). The peak hour measure reflects the actual travel times occurring on non-holiday weekdays during the morning and afternoon peak hours. The measure is designed to compare the longest trip time occurring during these hours to the amount of time desired to take the trip as perceived by the entities that operate the transportation system. This measurement approach is applied to the Interstate System and the non-Interstate NHS in only the largest urbanized areas in the country (those with a population of 1 million or more). The proposed measure identifies the portions of the system where actual peak hour travel times are no more than 50 percent greater than the desired time to take the trip.

As a complement to the truck reliability measure, in Subpart F the NPRM is proposing a measure that reflects where trucks are experiencing congestion on the Interstate System. This measure identifies the portions of the Interstate System where actual truck travel speeds throughout the year are at least 50 mph. This measure considers use of the system every day throughout the year.

The NPRM includes two proposed measures that would be needed to carry out the CMAQ program. The first is a measure proposed in Subpart G that reflects traffic congestion and the second is a measure proposed in Subpart H that reflects emission reductions through the delivery of CMAQ funded projects.

The proposed traffic congestion measure reflects the total amount of time during the year when highway users have experienced excessive delay. The measure identifies times during the day when vehicles are travelling at speeds below 35 mph for freeways/expressways or 15 mph for all other NHS roadways. The proposed measure is designed to sum the additional travel times weighted by traffic volumes that occur during these excessive delay conditions throughout the year. Additionally, the measure is proposed to be expressed as a rate calculated by dividing the total excessive delay time by the population in the area.

The proposed emission reduction measure reflects the reductions in particular pollutants resulting from the delivery of CMAQ funded projects. The measure focuses on the total emissions reduced per fiscal year, by all CMAQ-funded projects by criteria pollutant and applicable precursors in nonattainment and maintenance areas.

More specific details on each of these measures, including information on the areas where the measure is applicable, are included in both the Performance Management Measure Analysis Section (Section V) and the Section-by-Section Discussion of the General Information and Proposed Performance Measures Sections (Section VI). In addition, FHWA has developed short fact sheets for each of these measures that will be available on the docket.

c. Incorporating the FAST Act

On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act (Pub. L.114–94; Dec. 4, 2015) into law. For the most part, the FAST Act is consistent with the performance management elements introduced by MAP–21. For convenience, this NPRM will refer to MAP–21 throughout the preamble to signify the fundamental changes MAP–21 made to States' authorities and responsibilities for overseeing the implementation of performance management.

For the purposes of this NPRM, the FAST Act made two relevant changes to the performance management requirements. The first is 23 U.S.C. 119(e)(7), which relates to the requirement for a significant progress determination for NHPP targets. The FAST Act amended this provision to remove the term "2 consecutive reports." The FHWA has incorporated this change into this NPRM by removing the term "2 consecutive determinations," which was proposed in section 490.107(b)(3)(ii)(G), as well as 490.109(f) of the second NPRM, published January 5, 2015, at 80 FR 326. In section 490.109(f) of the second NPRM, FHWA stated that if a State DOT does not achieve or make significant progress for its NHS performance targets for two consecutive reporting periods (4-year period), then the State DOT must document in its Biennial Report the actions it will take to achieve the targets. The FAST Act has changed this. As a result, this NPRM proposes to require State DOTs to take action when they do not make significant progress over one reporting period, which looks back over 2 years. With this change, the significant progress determination is still made every 2 years, but it looks back over a 2-year period instead of a 4-year period.

The second change the FAST Act made is the addition of 23 U.S.C. 167(j), which requires FHWA to determine if a State has made significant progress toward meeting the performance targets related to freight movement, established under section 150(d) and requires a description of the actions the State will undertake to achieve the targets if significant progress is not made. To meet the these requirements, FHWA has incorporated language throughout this NPRM proposing to require the targets established for the measures in section 490.105(c)(6) to be included in the significant progress process and identifying the actions the State DOT will undertake to achieve the targets if significant progress is not made. The FHWA has called these the NHFP targets. The NHPP and NHFP use the same process for assessing significant progress and determining if significant progress is made.

d. Costs and Benefits

The FHWA estimated the incremental costs associated with the new requirements proposed in this regulatory action. The new requirements represent a change to the current practices of State DOTs and MPOs. The FHWA derived the costs of the new requirements by assessing the expected increase in the level of effort from labor for FHWA, State DOTs and MPOs to standardize and update data collection and reporting systems, as well as establish and report targets.

To estimate costs, FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate[4] which varied by the type of laborer needed to perform the activity. Where necessary, capital costs were included as well. Most of these measures rely on the use and availability of NPMRDS data provided by FHWA for use by State DOTs and MPOs. Because there is uncertainty regarding the ongoing funding of NPMRDS by FHWA, FHWA estimated the cost of the proposed rule according to two scenarios. First, assuming that FHWA provides State DOTs and MPOs with the required data from NPMRDS, the 11-year undiscounted incremental costs to comply with this rule are $165.3 million (Scenario 1).[5] Alternatively, under "worst case" conditions where State DOTs would be required to independently acquire the necessary data, the 11-year undiscounted incremental costs to comply with this rule are $224.5 million (Scenario 2). The total 11-year undiscounted cost is approximately 36 percent higher under Scenario 2 than under Scenario 1.

The FHWA performed three separate break-even analyses as the primary approach to quantify benefits. The FHWA focused its break-even analyses for (1) enhancing performance of the Interstate System and non-Interstate NHS by relieving congestion, and (2) improving freight movement on the value of travel time savings. The FHWA estimated the number of hours spent in congestion needed to be saved by commuters and truck drivers in order for the benefits of the rule to justify the costs. For each of these break-even analyses, FHWA presents results for both Scenario 1 (FHWA provides access to NPMRDS) and Scenario 2 (State DOTs must independently acquire the necessary data). The FHWA focused the third break-even analysis on reducing emissions. The FHWA estimated the reduction in pollutant tons needed to be achieved in order for the benefits of the rule to justify the costs.

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[4] Bureau of Labor Statistics (BLS) Employee Cost Index, 2012.

[5] In FHWA's first two performance measure NPRMs, it assessed costs over a 10-year study period. Because FHWA is now proposing individual effective dates for each of its performance measure rules rather than a common effective date, the timing of the full implementation of the measures has shifted. Using an 11-year study period ensures that the cost assessment includes the first 2 performance periods following the effective date of the rulemaking, which is comparable to what the 10-year study period assessed in the first two NPRMs. An 11-year study period captures the first year costs related to preparing and submitting the Initial Performance Report and a complete cycle of the incremental costs that would be incurred by State DOTs and MPOs for assembling and reporting all required measures as a result of the proposed rule. The FHWA anticipates that the recurring costs beyond this timeframe would be comparable to those estimated in the 10-year period of analysis.

The aforementioned benefits are quantified within the analysis, however, there are other qualitative benefits which apply to the proposed rule as a whole that result from more informed decisionmaking on congestion and emissions-reducing project, program, and policy choices. The proposed rule also would yield greater accountability because MAP–21-mandated reporting would increase visibility and transparency of transportation decisionmaking. The data reported to FHWA by the States would be available to the public and would be used to communicate a national performance story. The FHWA is developing a public Web site to share performance related information. In addition, the proposed rule would help focus the Federal-aid highway program on achieving balanced performance outcomes.

The results of the break-even analyses quantified the dollar value of the benefits that the proposed rule must generate to outweigh the cost of the proposed rule. The FHWA believes that the proposed rule would surpass these thresholds and, as a result, the benefits of the rule would outweigh the costs.

Table 1 displays the Office of Management and Budget (OMB) A–4 Accounting Statement as a summary of the cost and benefits calculated for this rule.

TABLE 1—OMB A–4 ACCOUNTING STATEMENT

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized ($millions/year).	None	None	None	NA	7	NA	Not Quantified.
	None	None	None	NA	3	NA	
Annualized Quantified	None	None	None	NA	7	NA	Not Quantified.
	None	None	None	NA	3	NA	
Qualitative	More informed decisionmaking on freight-, congestion-, and air quality-related project, program, and policy choices; greater accountability due to mandated reporting, increasing visibility and transparency; enhanced focus of the Federal-aid highway program on achieving balanced performance outcomes.						Proposed Rule RIA.
Costs:							
Annualized Monetized ($millions/year).	Scenario 1: $15,651,062. Scenario 2: $21,194,462.			2012	7	11 Years	Proposed Rule RIA.
	Scenario 1: $15,304,231. Scenario 2: $20,760,510.			2012	3	11 Years.	
Annualized Quantified	None	None	None	2012	7	11 Years	None.
	None	None	None	2012	3	11 Years	
Qualitative							
Transfers:							
Federal Annualized Monetized ($millions/ year).	None	None	None	NA	7	NA	None.
	None	None	None	NA	3	NA	
From/To	From:			To:			
Other Annualized Monetized ($millions/ year).	None	None	None	NA	7	NA	None.
	None	None	None	NA	3	NA	
From/To	From:			To:			
Effects:							
State, Local, and/or Tribal Government.	Scenario 1: $15,271,675. Scenario 2: $21,189,733.			2012	7	11 Years	Proposed Rule RIA.
	Scenario 1: $14,931,176. Scenario 2: $20,756,223.			2012	3	11 Years.	
Small Business	None			NA	NA	NA	None.
Wages	None						
Growth	Not Measured						

II. Acronyms and Abbreviations

Acronym or abbreviation	Term
AADT	annual average daily traffic
AASHTO	American Association of State Highway and Transportation Officials
CAA	Clean Air Act
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CO	Carbon monoxide
DOT	U.S. Department of Transportation
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FPM	Freight Performance Measurement
FR	**Federal Register**
GHG	Greenhouse gas
HPMS	Highway Performance Monitoring System
HSIP	Highway Safety Improvement Program
HSP	Highway Safety Plan
IFR	Interim Final Rule
LOTTR	Level of Travel Time Reliability
MAP–21	Moving Ahead for Progress in the 21st Century Act
MPH	Miles per hour
MPO	Metropolitan Planning Organizations
NAAQS	National Ambient Air Quality Standards
NCHRP	National Cooperation Highway Research Program
NHFP	National Highway Freight Program
NHPP	National Highway Performance Program
NHS	National Highway System
NHTSA	National Highway Traffic Safety Administration
NO_X	Nitrogen oxide
NPMRDS	National Performance Management Research Data Set
NPRM	Notice of proposed rulemaking
O_3	Ozone
OMB	Office of Management and Budget
PM	Particulate matter
PRA	Paperwork Reduction Act of 1995
RIA	Regulatory Impact Analysis
RIN	Regulatory Identification Number
SHSP	Strategic Highway Safety Plan
SME	Subject matter experts
State DOTs	State departments of transportation
TMA	Transportation Management Areas
TMC	Traffic Message Channel
TTI	Texas Transportation Institute
U.S.C.	United States Code
VMT	Vehicle miles traveled
VOC	Volatile organic compound

III. Discussion of Stakeholder Engagement and Outreach

This section of the NPRM summarizes DOT's engagement and outreach with the public and with affected stakeholders during the NPRM development process and the viewpoints they shared with DOT during these consultations. Section III includes three sub-sections:

- Sub-section A provides a general description of the stakeholder consultation process;
- Sub-section B describes the broader public consultation process; and
- Sub-section C summarizes stakeholder viewpoints shared with DOT. This sub-section is organized sequentially around the three major measurement focus areas of this rulemaking, including: (1) system performance and traffic congestion measures, (2) freight movement measures, and (3) on-road mobile source emissions measures.

Stakeholder engagement in developing the NPRMs is required by 23 U.S.C. 150(c) to enable DOT to obtain technical information as well as information on operational and economic impacts from stakeholders and the public. State DOTs, MPOs, transit agencies, and private and non-profit constituents across the country participated in the outreach efforts. A listing of each contact or series of contacts influencing the agency's position can be found in the docket.

A. Consultation with State Departments of Transportation, Metropolitan Planning Organizations, and Other Stakeholders

In accordance with 23 U.S.C. 150(c)(1), DOT consulted regularly with affected stakeholders (including State DOTs, MPOs, industry groups, advocacy organizations, etc.) to better understand the operational and economic impact of this proposed rule. In general, these consultations included:

- Conducting listening sessions and workshops to clarify stakeholder sentiment and diverse opinions on the interpretation of technical information on the potential economic and operational impacts of implementing 23 U.S.C. 150;
- Conducting listening sessions and workshops to better understand the state-of-the-practice on the economic

and operational impacts of implementing various noteworthy practices, emerging technologies, and data reporting, collection, and analysis frameworks;

- Hosting webinars with targeted stakeholder audiences to ask for their viewpoints through a chat pod or conference call;
- Attending meetings with non-DOT subject matter experts, including task forces, advocacy groups, private industry, non-DOT Federal employees, academia, etc., to discuss timelines, priorities, and the most effective methods for implementing 23 U.S.C. 150; and to discuss and collect information on the issues that need to be addressed or the questions that need to be answered in the NPRMs to facilitate efficient implementation.

B. Broader Public Consultation

It is DOT's policy to provide for and encourage public participation in the rulemaking process. In addition to the public participation that was coordinated in conjunction with the stakeholder consultation discussed above, DOT provided opportunities for broader public participation. The DOT invited the public to provide technical and economic information to improve the agency's understanding of a subject and the potential impacts of rulemaking. This was done by providing an email address (*performancemeasuresrulemaking@dot.gov*) feature on FHWA's MAP–21 Web site to allow the public to provide comments and suggestions about the development of the performance measures and by holding national online dialogues and listening sessions to ask the public to post their ideas on national performance measures, standards, and policies. The DOT also conducted educational outreach to inform the public about transportation-related performance measures and standards, and solicited comments on them.

In accordance with 23 U.S.C. 150(c)(2)(A), FHWA will "provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary . . ." During the notice and comment period, FHWA plans to hold public meetings to explain the provisions contained in these NPRMs, including this NPRM. All such meetings will be open to the public. However, all comments regarding the NPRM must be submitted in writing to the rulemaking docket.

C. Summary of Viewpoints Received

This section summarizes some of the common themes identified during the stakeholder outreach. It is important to note that some of the stakeholder comments related to more than one topic. In that case, the comments were placed under the theme most directly affected. The three themes include:

- Subparts E and G: Performance Management Measures to Assess Performance of the National Highway System and for Assessing Traffic Congestion.
- Subpart F: National Performance Management Measures to Assess Freight Movement on the Interstate System, and
- Subpart H: National Performance Management Measures for the Congestion Mitigation and Air Quality Improvement Program—On-Road Mobile Source Emissions.

1. Summary of Viewpoints Received for Subparts E and G: Performance Management Measures To Assess Performance of the National Highway System and For Assessing Traffic Congestion

The FHWA separated the stakeholder comments on the performance and congestion measures into four general areas, listed below and the comments are summarized in each of those areas.

- Stakeholders' Viewpoints on Measurement Approaches
- Stakeholders' Viewpoints on Measurement Calculation Methods
- Stakeholders' Viewpoints on Measurement Principles
- Stakeholders' Viewpoints on Measurement Challenges

a. Stakeholders' Viewpoints on System Performance and Traffic Congestion Measurement Approaches

Stakeholders provided input to DOT on many different measure approaches for assessing either performance on the Interstate System and non-Interstate NHS for the purpose of carrying out the NHPP or assessing traffic congestion for the purpose of carrying out the CMAQ program. In general, stakeholders' suggested approaches fell within the following categories:

- *Speed and Traffic Flow-based Approaches*—Some stakeholders suggested continued use of traffic flow-based performance measures already widely in use by transportation agencies. They suggested several variations on traffic flow-based approaches including use of "Level of Service" classifications described in the Transportation Research Board's Highway Capacity Manual, volume to capacity ratios, or actual vehicle speeds relative to free-flow speeds. Some stakeholders noted that data to support these measure approaches is widely available.
- *Spatial and Temporal Extent of Congestion-based Approaches*—Some stakeholders suggested that the spatial or temporal extent of congestion should be used as the basis for measuring performance. Suggestions included measures of the portion of system segments exceeding acceptable travel times and measures of how traffic and freight in a corridor are balanced across parallel roads and other modes. For a temporal-based measure, stakeholders suggested that this information could be used to help plan strategies for moving traffic from more congested to less congested routes or find the best ways to increase corridor capacity.
- *System Throughput Efficiency and Vehicle Occupancy-based Approaches*—Some stakeholders suggested throughput or vehicle occupancy-based measures of performance. Variations of throughput and vehicle occupancy measures suggested by stakeholders included the quantity of vehicles, goods, or people per lane hour or vehicle occupancy rates. Stakeholders described "spillover" benefits from improving throughput efficiency or vehicle occupancy including fewer crashes, lower emissions, and lower demand for infrastructure. Some stakeholders, however, noted that access to or availability of throughput or occupancy data for non-highway modes is a challenge.
- *Travel Time-based Approaches*—Many stakeholders suggested that travel time should be used as the basis for measuring performance. They offered many variations for characterizing travel time performance including "travel time per person," "travel time per vehicle," "travel delay per person," "travel delay per vehicle," and "percent of commutes less than 30 minutes," as well as use of these metrics to create planning time, travel time, travel slowness, or travel reliability indices. Some stakeholders also noted that travel time-based approaches might be adaptable for use in measuring transit, pedestrian, or bicycle system performance as data collection methods improve in the future. Many stakeholders who indicated support for travel time-based approaches stressed the importance of travel time reliability as a parameter that transportation users value highly. Some stakeholders who favored travel time-based approaches suggested that travel time measures are particularly relevant because travel time generally varies more than travel distance and it can be

influenced by State DOTs' and MPOs' operations practices.

- *Accessibility and Trip Generation-based Approaches*—Many stakeholders indicated a preference for accessibility measures over travel time-based measures as a basis for measuring performance. Several stakeholders indicated a concern that travel time-based measures emphasize mobility and may encourage dispersed land use patterns; whereas accessibility measures would emphasize ease of access to transportation options and consideration of where trips are generated. Stakeholders suggested many variations for characterizing accessibility or trip generation including "vehicle trip rate per household," "transportation efficiency based on distance," "miles traveled per employee," "vanpool passenger mileage," "number of employment locations reachable during rush hour within the travel time of the average commute," "average home to work commute time," "number of households able to reach businesses during off-peak hours within a reasonable time," or "time required to go from place to place." Some proponents of accessibility measures also suggested these measures may encourage greater consideration of non-auto travel modes like transit, carpooling, vanpooling, walking, and bicycling or options like telecommuting that tend to be more practical on systems with greater accessibility.

b. Stakeholders' Viewpoints on Measurement Calculation Methods

Stakeholders provided considerable input to DOT on detailed aspects of measure calculation methods. In general, stakeholders' suggestions fell within the following categories:

- *Geographic Focus for Measures*—Some stakeholders suggested performance measures should focus only on major corridors or in urbanized areas. They noted that current practice emphasizes corridor-level analysis and that the impact of heavily congested corridors may be masked by system-wide measures that include mostly uncongested system elements. Other stakeholders suggested that measures should focus on optimizing overall system performance rather than facility performance, with "system" being defined to include multimodal facilities as well as highways. Some stakeholders, however, suggested measures should be geographically scalable so that they can be used either on individual facilities or at a system-wide level.
- *Temporal Focus for Measures*—Some stakeholders suggested that performance measures should place particular emphasis on peak period travel to maximize productivity of roads during peak periods by minimizing congestion, reducing growth in VMT, and using the most cost-effective methods to move people and goods. Other stakeholders suggested measures should generally be scalable on a temporal basis so they can be evaluated based on variable periods of time, such as individual hours, or grouped into peak periods.
- *Travel Time Measurement Options*—Stakeholders offered several suggestions for developing effective travel time-based measures:
    - *Selection of Travel Time Percentiles for Travel Reliability Index*—Some stakeholders suggested that when formulating a travel reliability index, the 85th or 90th percentile travel time should be used rather than the 95th percentile because the highest percentile travel times may be outliers that do not reflect the impacts of day-to-day operations strategies on the system.
    - *Use of Travel "Slowness" as an Index*—Some stakeholders suggested that reversing the widely used travel time index creates a more understandable metric by expressing congestion in terms of how slowly traffic is moving rather than in terms of how long trips take; they suggested, as an example, that describing a facility or system as operating at two-thirds of its desired performance (66.6 percent) is more understandable than saying it has a travel time index of 1.50.
    - *Threshold Times for Travel Indices*—Some stakeholders suggested that free flow speed is appropriate to use in calculating travel time-based indices. Other stakeholders indicated that free flow or posted speeds are unrealistic because State DOTs lack resources to achieve free flow conditions across their networks. "Maximum throughput" speed was suggested by some stakeholders as an alternative to free flow speed which they indicated is usually 70 to 85 percent of free flow but varies by facility.
    - *Travel Time Data Collection*—Some stakeholders suggested collecting origin and destination travel time data via techniques such as license plate surveys for vehicles or for other modes by riding bicycle or transit corridors to collect data.
- *Methods for Improving Accuracy of Vehicle Occupancy Counts*—Some stakeholders who supported vehicle occupancy-based measures suggested use of a combination of technology-based data collection methods for improving the consistency of vehicle occupancy data, such as automated video image processing or in-vehicle technologies like seat belt detectors, and survey or counting techniques, such as manual field counts, home interviews, transit rider counts, census survey questions, or trip generation studies at employment centers. Stakeholders noted that occupancy data collection can be costly and may not need to be comprehensive to provide reasonable estimates.
- *Use Census and American Community Survey Data*—Some stakeholders suggested U.S. Census data could be used to examine performance, including information on commuting contained in the Census. Other stakeholders also suggested DOT could work with the Census to develop self-monitoring technologies, like Global Positioning Systems (GPS), or to build on the model of the American Community Survey and develop a continuous data collection resource for more detailed commuting information. Some stakeholders suggested developing standardized survey templates for communities to use for their own travel surveys.

c. Stakeholders' Viewpoints on Measurement Principles

Stakeholders provided DOT with input on general principles for selecting measures. In general, stakeholders' suggestions fell within the following categories:

- *Measures Should Be Simple To Understand*—Many stakeholders suggested that measures should be simple for the general public to understand, with some further suggesting that travel time-based measures, particularly travel reliability, are well understood by the general public.
- *Measures Should Rely on Readily Available Data*—Some stakeholders suggested that measures should not include burdensome data collection requirements and that data collection and analysis requirements should be flexible and relevant to community needs. Some stakeholders noted that investment is needed in resources such as analysis tools and reporting mechanisms and guidance to make performance measures meaningful and useful.
- *Measures Should Reflect MAP–21 National Goals*—Some stakeholders suggested that DOT should select a set of measures that reflect MAP–21 national goals that benefit from reducing congestion while providing safer, more

sustainable transportation systems that increase accessibility.

- *States Should Be Allowed To Select Measures/Avoid "One-Size-Fits-All" Measures*—Some stakeholders suggested that selection of measures should be at the discretion of the State DOT or MPO, with Federal requirements focusing on monitoring and reporting of States' measures. It was also suggested that performance measures should not follow a "one-size-fits-all" approach and should allow for flexibility. Stakeholders noted that agencies have many options for improving traffic conditions, not only by adding capacity, but also by improving operations or reducing travel demand, and agencies' choices will depend on unique constraints determined by available funding, physical geography, and regional priorities. Stakeholders suggested that FHWA should allow agencies to tell their "story" via customized measures that reflect the unique strategies they use to manage congestion. Other stakeholders suggested that differences in data availability from place to place will preclude standardization and reasoned that FHWA should allow variation in measures because this will ensure agencies begin to assess performance.
- *Ensure Standardization of Measures*—Some stakeholders suggested that although allowing use of different measures is appealing because it gives flexibility to States, it will also make national-level analysis difficult. Based on this reasoning, these stakeholders concluded that measures should be standardized.
- *Avoid Measures That Cause Policy Bias*—Some stakeholders suggested that the choice of measures (*e.g.*, per vehicle mile or per capita) will influence how communities prioritize projects. For example, these stakeholders explained that policy decisions may be different if the measure is based on per vehicle mile crashes or per capita crashes because reporting changes in crashes per vehicle mile fails to reflect reductions in total vehicle mileage.
- *Measures Should Capture Wider Impacts*—Some stakeholders suggested that performance metrics should capture the effects of transportation investments on economic growth, efficient land use, environment, and community quality of life, and should support development of wider choices for solving congestion.
- *Measures for Individual Modes*—Some stakeholders suggested metrics should measure performance across transportation modes as a way to encourage development of multimodal transportation solutions. Other stakeholders expressed interest in measures that allow direct comparison of the benefits and costs of all modes (*e.g.*, transit, transportation demand management, road construction, system management). Stakeholders noted that if such metrics were pursued, they should consider the full extent of externalities in the calculation of costs. In particular, some stakeholders suggested that travel time-based measures should take into account all parts of a trip (walking, parking, driving, transit, etc.) to reflect overall transportation network performance.
- *Measures Should Establish Minimum Acceptable Performance Levels*—Some stakeholders suggested that performance measures should help transportation agencies identify where corridors fall below minimum performance levels and help communities identify alternatives that allow them to reach that minimum performance level.
- *Distinguish Between Congestion and Reliability*—Some stakeholders noted a distinction between recurrent congestion and travel time reliability, noting that agencies typically have limited control over recurrent congestion that is caused by physical capacity constraints. On the other hand, stakeholders explained that reliability can be influenced by efficient management of non-recurring incidents. A focus on reliability, according to these stakeholders, would give agencies credit for operational improvements that may improve travel time reliability but do not necessarily increase capacity.

d. Stakeholders' Viewpoints on Measurement Challenges

Stakeholders provided DOT with input on perceived measurement challenges. In general, stakeholders' suggestions fell within the following categories:

- *Travel Time-based Measures Do Not Capture System Accessibility Benefits*—Some stakeholders expressed concern that reliance on travel time-based measures alone may penalize densely developed communities that offer high levels of accessibility but not necessarily shorter travel times.
- *Measures Should Recognize That Reducing Congestion Is Impractical in Some Regions*—Some stakeholders suggested that measures should acknowledge that, in fast growing areas, the rate of congestion growth can only be slowed down, not reversed.
- *Some Measures May Favor Adding Road Capacity Over Non-Auto Solutions to Congestion*—Some stakeholders expressed concerns about measure approaches they think are more likely to encourage road capacity additions that generate sprawl and are expensive to maintain, versus alternative solutions such as transit, carpools, bicycling, telework, or shifting work hours. Measurement approaches for which this concern was raised included measures that emphasize travel time per mile or vehicle speeds. Other stakeholders suggested that land use is a stronger influence on decisions to add road capacity than travel time or vehicle speeds.
- *Target Setting for Congestion Is Premature*—Some stakeholders suggested that system (congestion) performance measurement is one of the least mature and least robust measurement areas in transportation and that developing consistent data sets and understanding the patterns, causes, and trends in congestion is more important than establishing targets. Stakeholders suggested that a set of realistic performance targets should be determined locally (State and region) only after trend data and explanatory variables have been collected, analyzed, and made available for multiple years, thus creating a transition period or phased implementation of congestion related MAP–21 performance measurements.
- *System-wide Measures Do Not Support Project-Level Decisionmaking*—Some stakeholders expressed concern that national-level measures of performance are not sufficient to guide specific investments because they are not sensitive enough to capture the results of specific strategies and projects.

2. Summary of Viewpoints Received for Subpart F: National Performance Management Measures To Assess Freight Movement on the Interstate System

Freight movement is multidimensional and includes a variety of public and private stakeholders with unique perspectives. In addition to the public participation and stakeholder consultation described in Section III.A., of this NPRM, DOT held listening sessions with representatives of the freight stakeholder community from the private and public sectors. Outreach to stakeholders through these sessions provided valuable information for FHWA to consider in developing the proposed measures. The major themes collected from each session and relevant academic research are detailed below.

Freight Roundtable

The FHWA held a Freight Roundtable event that brought together membership of the Freight Policy Council, a group of the executive leadership in each operating administration at DOT, with multimodal industrial representatives and State and local leaders. Discussion was focused on freight planning and performance measurement. Panelists representing the freight community provided insights into both planning and measurement practices, issues, needs, and opportunities. Major themes of the subsequent discussion focused on multimodal measurements including reliability, trip time, access, safety, accident recovery, and economic measures. Predominant measure suggestions included reliability and travel time, which were described by a majority of attendees as the most valuable to the freight system user in the movement of goods.

State-Level Stakeholders

The FHWA held a listening session for State-level stakeholder organizations as these organizations have followed MAP–21's development and DOT's implementation activities and will have responsibility for reporting on the measures. These State-level stakeholders have advocated transportation-related policies and developed a significant amount of transportation research and findings that have contributed to the performance measure discussions surrounding MAP–21 implementation. Their suggestions included measures such as travel time, reliability, and bottleneck identification. Specifically, participants described travel time, reliability and speed as important to understand economic efficiency. Concern was expressed regarding data collection, cost, and burden to the States. Additionally, participants noted concern about external factors that are harder to measure or consider, as well as a lack of control over measures for safety or economics, where States do not want to be evaluated because they have little control in how to influence the measure. There was some discussion on targets and thresholds, noting that measuring speed and travel time against posted speed would be challenging due to regulators on trucks that limit speed, and variations in external factors would need to be considered by States in setting targets.

In addition to the listening session, the American Association of State Highway and Transportation Officials (AASHTO) performed a comprehensive analysis of the MAP–21 provisions and wrote a letter that contained recommendations approved by their membership for the MAP–21 Performance Measure Rulemaking. Other stakeholders and individuals provided recommendations as well. These letters are all posted on the docket for review. For freight movement on the Interstate, these recommendations included the following:

- National level performance measures may not be the same performance measures State DOTs would use for planning and programming of transportation projects and funding.
- National level performance measures should be specific, measurable, attainable, realistic, timely, and simple.
- National level performance measures should focus on areas and assets where State DOTs have control.
- The initial set of national-level performance measures should build upon existing performance measures, management practices, data sets, and reporting processes.
- National level measures should be forward thinking to allow continued improvement over time.
- Messaging the impact and meaning of the national-level measures to the public and other audiences is vital to the success of this initiative.
- Flexibility in target setting to allow States to set their own thresholds and targets.

Metropolitan Planning Organizations and Other Regional Organizations

Like State-level stakeholders, MPO and regional organization freight representatives provided input in the MAP–21 outreach process for freight movement on the Interstate performance measures. In a listening session held with these representatives, key themes were consideration of hours of service for truck operators, economic efficiency, job creation measures, environmental measures, congestion, travel speed, and reliability. These stakeholders also identified information from shippers as necessary for interpreting the user perspective. Representatives supported travel time and reliability as most critical for measurement and indicated that these measures were most important for businesses in their regions.

Additional regional organization stakeholders, representing both urban and rural areas, further called for consistency in the adoption of measures that could best describe the freight system while considering differences in mode, geography, locations of freight facilities, and practices. Additional concerns were related to how to adapt freight performance measures to current measures that may not provide the correct picture of freight movement even though they are good measures for passenger transport or some other function. Finally, representatives supported measures that identified reliability and the refinement and use of data for measuring reliability on freight corridors.

Trucking Industry and Freight Business Stakeholders

The FHWA held listening sessions with stakeholders representing a subset of the freight industry, primarily trucking, whose performance would be measured as part of this rule. These stakeholders represent various parts of the flow of goods from origin to destination and depend on the freight system for on-time deliveries of goods. More specifically, these stakeholders include professional truckers such as corporate drivers, owner-operators, and retired truckers, representatives of trucking companies, shippers, and related businesses.

The main comments received from these stakeholders related to truck parking, highway average speeds, bottlenecks, safety, oversize and overweight inconsistencies, tolls, and delay. Average speed was important to stakeholders because it provided drivers and industrial planners with the information they needed to plan routes and delivery schedules. Stakeholders identified reliability as important because it provides the driver with the flexibility to plan routes and deliveries by knowing what to expect at what time. One participant noted that it is very difficult for a driver to say that average speed is more important than travel time or reliability—this depends on time of day or where the driver needs to go. The participant gave examples where he could drive in and out of a metropolitan area without issue at one time of day but have significant delays at other times. Time of day and other external factors were said to be important when measuring performance.

Some shipper and business owner comments, as well as those of their own drivers, suggested that performance measures for freight include safety, travel time, hours of service, trends of delay, speeds, and connections to other modes or access. They said time was critical because travel times are useful in planning deliveries. Further, measuring trends of delay could help identify better opportunities for route plans. These stakeholders noted that bottlenecks, speed, and travel time information were important to measure and further, identified speed as a useful measure for determining bottlenecks.

In April 2013, FHWA sought clarification from stakeholders on comments made during the listening sessions, specifically on measure thresholds and target setting. In subsequent outreach, the American Trucking Association, the Owner-Operator Independent Drivers Association, and AASHTO primarily reiterated previous comments that, in developing the measure, FHWA should balance the public and private perspective by providing flexibility to States for assessing freight movement and developing a measure that would be useful to the freight industry.

a. Stakeholders' Viewpoints on Measurement Approaches

Freight stakeholders provided diverse perspectives on approaches for assessing freight movement on the Interstate System including the use of measures based on accessibility, delay, speed, safety, parking availability, bottleneck identification, accident recovery, consistency in oversize/overweight vehicle practices, tolling practices, hours-of-service for truck operators, environmental impacts, and economic impacts. A common theme was the importance of speed, reliability, and travel time measures to freight system users because they can use this information to plan freight movements.

b. Stakeholders' Viewpoints on Measurement Challenges

Stakeholders provided input to DOT on the following perceived measurement challenges:

- *Avoid Additional Burden for Agencies*—Stakeholders expressed concern regarding the cost and burden to the States of freight data collection.
- *Lack of Control Over Performance Outcomes*—Some stakeholders noted concern about measuring and influencing external factors, such as safety and economic impacts, where agencies have little control over measure results.
- *Freight Measures are not the same as Broader System Performance Measures*—Some stakeholders expressed concern that broad system-level measures of performance may not adequately represent freight conditions.

c. Stakeholders' Viewpoints on Measurement Methods

Stakeholders provided input to DOT on detailed aspects of measure calculation methods. In general, stakeholders' suggestions fell within the following categories:

- *Use of "Posted Speed" in Performance Measures*—Some stakeholders noted that posted speed is not a satisfactory baseline for performance measures because of the use of embedded governors or speed control devices companies install on trucks that limit speed and variations in other external factors.
- *Reliability Thresholds*—Stakeholders supported the use of a reliability measure as it is universally used and understood among transportation agencies and freight representatives. Reliability is often measured in the form of an index such as a Planning Time Index or Buffer Index, which both express a ratio of the worst travel time compared to a free flow, normal day, or average travel time. Freight stakeholders supported the numerator of a measurement index to be defined as the 95th percentile because it represents the higher degree of certainty for on-time arrival that freight stakeholders use in their route planning and deliveries. Understanding the gap between normal travel time and the 95th percentile will help to work toward operational and capital strategies that will improve reliability. Improving freight reliability is critical for freight stakeholders as it lessens transportation costs associated with delay. Travel times above a 95th percentile are usually attributed to unique and outlying circumstances, such as a major accident or event that significantly shuts down the roadway.
- *Measure Definitions*—Stakeholders mentioned research by the National Cooperation Highway Research Program (NCHRP), including NCHRP Report 20–24 (37)G Technical Guidance for Deploying National Level Performance Measures, that defines "average speed" as the average speed of trucks over a 24-hour period and "Reliability" as the ratio of the 95th percentile travel time to mean segment travel time.

d. Stakeholders' Viewpoints on Measurement Principles

Stakeholders provided DOT with some general principles for selecting measures. In general, stakeholders' suggestions fell within the following categories:

- *Flexibility in Measurement Approaches*—Some stakeholders suggested that national requirements for performance measurement should be flexible enough to allow for variation in regional and State geographic characteristics and modal options.
- *National Measures May Not Match State DOT's Measures*—National-level performance measures may not be the same performance measures State DOTs would use for planning and programming of transportation projects and funding.
- *Measures Should Address Issues that State DOTs Control*—National-level performance measures should focus on areas and assets where State DOTs have control.
- *Measures Should Build on Past Experience*—Stakeholders emphasized that the initial set of national-level performance measures should build upon existing performance measures, management practices, data sets, and reporting processes.
- *Measures Should Allow Improvement Over Time*—Stakeholders suggested that national-level measures should be forward thinking to allow continued improvement over time.
- *Measures Should be Accompanied by Communication*—Stakeholders suggested that messaging the impact and meaning of the national-level measures to the public and other audiences is vital to the success of this initiative.
- *Flexibility in Target Setting*—Stakeholders suggested that there should be flexibility in target setting to allow States to establish their own thresholds and targets.
- *Specificity, Simplicity, and other General Characteristics*—Stakeholders advocated for specific, measurable, attainable, realistic, and timely national level performance measures. Additionally, stakeholders advocated for simplicity, arguing that measures should be simple and easy to understand.

3. Summary of Viewpoints Received for Subpart H: National Performance Management Measures for the Congestion Mitigation and Air Quality Improvement Program—On-Road Mobile Source Emissions

Stakeholders provided DOT with input on data collection and reporting related to on-road mobile source emissions. Suggestions generally fell in the following categories:

- *Consistency with Current CMAQ Reporting Requirements and Practices*—Some stakeholders suggested that on-road mobile source emissions measures should be consistent with current CMAQ program reporting requirements and practices because quantification of CMAQ project-related emissions reductions is already required under 23 U.S.C. 149. Stakeholders emphasized that any new performance data and reporting should be consistent with and build upon current practice.
- *Avoid Imposing Burdens on Areas in Attainment*—Some stakeholders suggested new measures should not burden those parts of the country with monitoring when none is required by the Clean Air Act (CAA). It was noted that States without nonattainment areas are exempt from the burden of developing sophisticated emissions

analysis tools and should not be required to do so going forward.

- *Geographic Applicability of Reporting*—Some stakeholders suggested that emissions reporting should be limited solely to large urbanized areas where air quality planning efforts are focused and most CMAQ funding is directed. Other stakeholders suggested reporting also should include small urban areas.
- *Emissions Reporting Methods*—Stakeholders suggested various analytic and empirical methods for performance measurement:
  - *Consistency with EPA or California Emissions Models*—Performance measures should be consistent with emissions modeling tools developed by EPA (Motor Vehicle Emission Simulator—MOVES)[6] and the California Air Resources Board (EMFAC).[7]
  - *Applicability of EPA-recommended Sustainable Transportation Measures*—The EPA's "Guide to Sustainable Transportation Performance Measures" is a helpful resource for developing on-road mobile source emission reporting approaches.
  - *Applicability of Envision Tomorrow ArcGIS Tool*—Envision Tomorrow,[8] which is an extension for ArcGIS, could be a helpful tool for creating land-use scenarios and assessing their environmental and other impacts.
  - *Region-specific Fleet Information*—MPOs may wish to consider using region specific fleet mix information when calculating emissions.
- *Agency Emissions Data Capabilities*—Some stakeholders cautioned that State DOTs and MPOs vary in their capabilities to collect, replicate, and report data on an annual basis.
- *Emissions Reporting should Include Greenhouse Gases*—It was suggested that greenhouse gas (GHG) emissions be tracked since GHGs are correlated with fuel use and air toxins.

IV. Rulemaking Authority and Background

The cornerstone of MAP–21's Federal-aid highway program transformation is the transition to a performance and outcome-based program. As part of this transformation, and for the first time, recipients of Federal-aid highway funds make transportation investments to achieve individual targets that collectively make progress toward national goals.

The MAP–21 provisions that focus on the achievement of performance outcomes are contained in a number of sections of the law that are administered by different DOT agencies. Consequently, these provisions require an implementation approach that includes a number of separate but related rulemakings, some from other modes within DOT. A summary of the rulemakings related to this proposed rule is provided in this section and additional information regarding all related implementation actions is available on the FHWA Web site.[9]

A. Summary of Related Rulemakings

The DOT's proposal regarding MAP–21's performance requirements will be presented through several rulemakings. As a brief summary, these rulemaking actions are listed below and should be referenced for a complete picture of performance management implementation. The summary below describes the main provisions that DOT plans to propose for each rulemaking. The DOT has sought or plans to seek comment on each of these rulemakings.

1. First Federal-Aid Highway Performance Measure Rule (FR Vol.81 No.50),[10] Focused on Highway Safety

a. Propose and define national measures for the HSIP
b. State and MPO target establishment requirements for the Federal-aid highway program
c. Determination of significant progress toward the achievement of targets
d. Performance progress reporting requirements and timing
e. Discuss how FHWA intends to implement MAP–21 performance-related provisions.

2. Second Federal-Aid Highway Performance Measure Rule (RIN: 2125–AF53),[11] Focused on Highway Asset Conditions.

a. Propose and define national measures for the condition of NHS pavements and bridges
b. State and MPO target establishment requirements for the Federal-aid highway program
c. Determination of significant progress toward the achievement of targets for NHPP
d. Performance progress reporting requirements and timing
e. Minimum standards for Interstate System pavement conditions.

3. Third Federal-Aid Highway Performance Measure Rule, Focused on Assessing Performance of the NHS, Freight Movement on the Interstate System, and CMAQ (This NPRM)

a. Propose and define national measures for the remaining areas under 23 U.S.C. 150(c) that require measures and are not discussed under the first and second measure rules, which includes the following: National Performance Measures for Performance of the Interstate System and non-Interstate National Highway System; CMAQ—Traffic Congestion; CMAQ—On-Road Mobile Source Emissions; and Freight Movement on the Interstate System
b. State and MPO target establishment requirements for the Federal-aid highway program
c. Performance progress reporting requirements and timing
d. Determination of significant progress toward the achievement of targets for NHFP as well as the NHPP
e. Provide a summary of all three performance measures rules (Table 2 below lists all proposed measures and the entire Part 490 is in the docket).

TABLE 2—SUMMARY OF RULEMAKINGS TO IMPLEMENT THE NATIONAL PERFORMANCE MANAGEMENT MEASURE RULES

Rulemaking	23 CFR Part 490 section	Proposed performance measure	Measure applicability
Safety PM Final Rule	490.207(a)(1)	Number of fatalities	All public roads.
Safety PM Final Rule	490.207(a)(2)	Rate of fatalities	All public roads.
Safety PM Final Rule	490.207(a)(3)	Number of serious injuries	All public roads.

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[6] Motor Vehicle Emission Simulator—MOVES: *http://www.epa.gov/otaq/models/moves/index.htm.*

[7] California Air Resources Board (EMFAC): *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.*

[8] Envision Tomorrow: *http://www.envisiontomorrow.org/about-envision-tomorrow/.*

[9] *http://www.fhwa.dot.gov/map21/qandas/qapm.cfm.*

[10] National Performance Management Measures; Highway Safety Improvement Program, 81 FR 13882 (Published on March 15, 2016) (codified at 23 CFR part 490).

[11] National Performance Management Measures Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program, 80 FR 325 (proposed January 5, 2015) (to be codified at 23 CFR part 490).

TABLE 2—SUMMARY OF RULEMAKINGS TO IMPLEMENT THE NATIONAL PERFORMANCE MANAGEMENT MEASURE RULES—Continued

Rulemaking	23 CFR Part 490 section	Proposed performance measure	Measure applicability
Safety PM Final Rule	490.207(a)(4)	Rate of serious injuries	All public roads.
Safety PM Final Rule	490.207(a)(5)	Number of non-motorized fatalities and non-motorized serious injuries.	All public roads.
Infrastructure PM NPRM	490.307(a)	Percentage of pavements of the Interstate System in Good condition.	The Interstate System.
Infrastructure PM NPRM	490.307(a)(2)	Percentage of pavements of the Interstate System in in Poor condition.	The Interstate System.
Infrastructure PM NPRM	490.307(a)(3)	Percentage of pavements of the non-Interstate NHS in Good condition.	The non-Interstate NHS.
Infrastructure PM NPRM	490.307(a)(4)	Percentage of pavements of the non-Interstate NHS in Poor condition.	The non-Interstate NHS.
Infrastructure PM NPRM	490.407(c)(1)	Percentage of NHS bridges classified as in Good condition.	NHS.
Infrastructure PM NPRM	490.407(c)(2)	Percentage of NHS bridges classified as in Poor condition.	NHS.
System Performance PM NPRM.	490.507(a)(1)	Percent of the Interstate System providing for Reliable Travel.	The Interstate System.
System Performance PM NPRM.	490.507(a)(2)	Percent of the non-Interstate NHS providing for Reliable Travel.	The non-Interstate NHS.
System Performance PM NPRM.	490.507(b)(1)	Percent of the Interstate System where peak hour travel times meet expectations.	The Interstate System in urbanized areas with a population over 1 million.
System Performance PM NPRM.	490.507(b)(2)	Percent of the non-Interstate NHS where peak hour travel times meet expectations.	The non-Interstate NHS in urbanized areas with a population over 1 million.
System Performance PM NPRM.	490.607(a)	Percent of the Interstate System Mileage providing for Reliable Truck Travel Time.	The Interstate System.
System Performance PM NPRM.	490.607(b)	Percent of the Interstate System Mileage Uncongested.	The Interstate System.
System Performance PM NPRM: CMAQ –traffic congestion.	490.707	Annual Hours of Excessive Delay Per Capita	The NHS in urbanized areas with a population over 1 million in nonattainment or maintenance for any of the criteria pollutants under the CMAQ program.
System Performance PM NPRM: CMAQ—On-road mobile source emissions.	490.807	Total tons of emissions reduced from CMAQ projects for applicable criteria pollutants and precursors.	Projects financed with CMAQ funds in all non-attainment and maintenance areas for one or more of the criteria pollutants under the CMAQ program.

4. Update to the Metropolitan and Statewide Planning Regulations (RIN: 2125–AF52)[12]

a. Supporting national goals in the scope of the planning process

b. Coordination between States, MPOs, and public transportation providers in selecting FHWA and public transportation performance targets

c. Integration of elements of other performance-based plans into the metropolitan and statewide planning process

d. Discussion in Metropolitan and Statewide Transportation Improvement Programs section documenting how the programs are designed to achieve targets

e. New performance reporting requirements in the Metropolitan transportation plan.

5. Updates to the Highway Safety Improvement Program Regulations (FR Vol.81 No.50)[13]

a. Integration of performance measures and targets into the HSIP

b. Strategic Highway Safety Plan (SHSP) updates

c. Establishment of Model Inventory of Roadway Element Fundamental Data Elements

d. HSIP reporting requirements.

6. Federal-Aid Highway Asset Management Plan Rule (RIN: 2125–AF57)[14]

a. Contents of asset management plan

b. Certification of process to develop plan

c. Transition period to develop plan

d. Minimum standards for pavement and bridge management systems.

7. Transit State of Good Repair Rule (RIN: 2132–AB20)[15]

a. Define state of good repair and establish measures

b. Transit asset management plan content and reporting requirements

c. Target establishment requirements for public transportation agencies and MPOs.

8. Transit Safety Plan Rule (RIN: 2132–AB20)[16]

a. Define transit safety standards

b. Transit safety plan content and reporting requirements.

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[12] Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning, 79 FR 31784 (proposed June 2, 2014) (to be codified at 23 CFR part 450).

[13] Highway Safety Improvement Program, 81 FR 13722 (published on March 15, 2016).

[14] Asset Management Plan, 80 FR 9231 (proposed on February, 20, 2015)(to be codified at 23 CFR part 515).

[15] The FTA published their Advance Notice of Proposed Rulemaking (ANPRM) that incorporated items 7 and 8, on October 3, 2013. This ANPRM may be found at: *http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*

[16] Ibid.

9. Highway Safety Grant Programs Rule (National Highway Traffic Safety Administration (NHTSA) Interim Final Rule[17] (IFR), RIN: 2127–AL30, 2127–AL29)

a. Highway Safety Plan (HSP) contents, including establishment of performance measures, targets, and reporting requirements
b. Review and approval of HSPs.

B. Organization of MAP–21 Performance-Related Provisions

The FHWA organized the many performance-related provisions within MAP–21 into six elements as defined below:

- *National Goals*—Goals or program purpose established in MAP–21 to focus the Federal-aid highway program on specific areas of performance.
- *Measures*—Establishment of measures by FHWA to assess performance and condition in order to carry out performance-based Federal-aid highway programs.
- *Targets*—Establishment of targets by recipients of Federal-aid highway funding for each of the measures to document expectations of future performance.
- Plans—Development of strategic and/or tactical plans by recipients of Federal-aid highway funding to identify strategies and investments that will address performance needs.
- *Reports*—Development of reports by recipients of Federal funding that would document progress toward the achievement of targets, including the effectiveness of Federal-aid highway investments.
- *Accountability*—Requirements developed by FHWA for recipients of Federal funding to use to achieve or make significant progress for targets established for performance.

The following provides a summary of MAP–21 provisions, as they relate to the six elements listed above, including a reference to other related rulemakings that should be considered for a more comprehensive view of MAP–21 performance management implementation.

1. National Goals

The MAP–21 sec. 1203 establishes national goals to focus the Federal-aid highway program. The following national goals are codified at 23 U.S.C. 150(b):

- *Safety*—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State owned public roads and roads on tribal lands.
- *Infrastructure condition*—To maintain the highway infrastructure asset system in a state of good repair.
- *Congestion reduction*—To achieve a significant reduction in congestion on the NHS.
- *System reliability*—To improve the efficiency of the surface transportation system.
- *Freight movement and economic vitality*—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.
- *Environmental sustainability*—To enhance the performance of the transportation system while protecting and enhancing the natural environment.
- *Reduced project delivery delays*—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.

These national goals will largely be supported through the metropolitan and statewide planning process, which is discussed under a separate rulemaking (RIN: 2125–AF52) to update the Metropolitan and Statewide Planning Regulations at 23 CFR part 450.

2. Measures

The MAP–21 requires the establishment of performance measures, in consultation with State DOTs, MPOs, and other stakeholders, that would do the following:

- Carry out the NHPP and assess the condition of pavements on the Interstate System and the NHS (excluding the Interstate System), the condition of bridges on the NHS, and performance of the Interstate System and NHS (excluding the Interstate System);
- Carry out the HSIP and assess serious injuries and fatalities per VMT and the number of serious injuries and fatalities;
- Carry out the CMAQ program and assess traffic congestion and on-road mobile source emissions; and
- Assess freight movement on the Interstate System.

The MAP–21 also requires the Secretary to establish the data elements necessary to collect and maintain standardized data to carry out a performance-based approach.[18]

The FHWA proposed to issue three rulemakings in sequence to implement the measures for the areas listed above. The first rulemaking, issued as a NPRM on March 11, 2014 and published as a final rule on March 15, 2016, focused on the performance measures, for the purpose of carrying out the HSIP, to assess the number of serious injuries and fatalities and serious injuries and fatalities per VMT. The second NPRM focused on the measures to assess the condition of pavements and bridges, and this third NPRM proposes measures for the remaining areas under 23 U.S.C. 150(c).

The FHWA had proposed in the prior performance management NPRMs to establish one common effective date for its three performance measure final rules. While FHWA recognizes that one common effective date could be easier for State DOTs and MPOs to implement, the process to develop and implement all of the Federal-aid highway performance measures required in MAP–21 has been lengthy. It is taking more than 3 years since the enactment of MAP–21 to issue all three performance measure NPRMs (the first performance management NPRM was published on March 11, 2014; the second NPRM was published on January 5, 2015). Rather than waiting for all three rules to be final before implementing the MAP–21 performance measure requirements, FHWA has decided to phase in the effective dates for the three final rules for these performance measures so that each of the three performance measures rules will have individual effective dates. This allows FHWA and State DOTs to begin implementing some of the performance requirements much sooner than waiting for the rulemaking process to be complete for all the rules. The FHWA believes that individual implementation dates will also help State DOTs transition to performance based planning.

On March 15, 2016, FHWA published a final rule (FR Vol. 81 No. 50) covering the safety-related elements of the Federal-aid Highway Performance Measures Rulemaking. With the staggered effective dates, the Rule will be implemented in its entirety before the other two rules are finalized.

Based on the timing of each individual rulemaking, FHWA would provide additional guidance to stakeholders on how to best integrate the new requirements into their existing processes. Under this approach, FHWA expects that even though the implementation for each rule would occur as each final rule is published, implementation for the second rule would ultimately be aligned with the third rule through a common performance period. In the second performance management measure NPRM, FHWA proposed that the first 4-year performance period would start on January 1, 2016. However, FHWA proposes in this NPRM that the first performance period would begin on January 1, 2018. This would align the performance periods and reporting requirements for the proposed measures in the second and third performance management measure NPRMs. The FHWA has placed on the docket a timeline that illustrates how this transition could be implemented. However, FHWA seeks comment from the public on what an appropriate effective date(s) could be. Additional information on the approach to establish performance measures for the Federal-aid highway program can be found on FHWA's Transportation Performance Management Web site.[19]

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[17] 23 U.S.C. 402(k); Uniform Procedures for State Highway Grant Programs, Interim Final Rule, 78 FR 4986 (Jan. 23, 2013) (to be codified at 23 CFR part 1200).

[18] 23 U.S.C. 150(c)(1)

The MAP–21 also requires FHWA to establish minimum levels for the condition of pavements for the Interstate System necessary to carry out the NHPP, which was proposed in the second rulemaking.[20] In addition, MAP–21 also requires FHWA to establish minimum standards for State DOTs to use in developing and operating bridge and pavement management systems, which FHWA proposed in a separate rulemaking to establish an Asset Management Plan (RIN 2125–AF57) for the NHS.[21]

Separate sections of MAP–21 require the establishment of additional measures to assess public transportation performance.[22] These measures, which would be used to monitor the state of good repair of transit facilities and to establish transit safety criteria, would be addressed in two separate rulemakings led by Federal Transit Administration (FTA).

In regard to the Federal Lands Transportation Program, FHWA anticipates working with eligible Federal entities to establish performance measures.

3. Targets

The MAP–21 requires State DOTs to establish performance targets reflecting measures established for the Federal-aid highway program [23] and requires MPOs to establish performance targets for these measures where applicable.[24] The first NPRM proposed the process for State DOTs and MPOs to follow in the establishment of safety performance targets, and was published as a final rule on March 15, 2016. The second NPRM and the third Federal-aid highway measure NPRM discusses similar target establishment requirements for State DOTs and MPOs as they relate to the measures discussed in the respective proposed rules. Additionally, State DOTs and MPOs are required to coordinate when selecting targets for the areas specified under 23 U.S.C. 150(c) in order to ensure consistency in the establishment of targets, to the maximum extent practical.[25] A separate rulemaking to update the Metropolitan and Statewide Planning Regulations (RIN 2125–AF52) at 23 CFR 450 discusses this coordination requirement.

Further, MAP–21 requires State Highway Safety Offices to establish targets for 11 core highway safety program outcome measures in the State HSP, which NHTSA has implemented through an Interim Final Rule,[26] and for recipients of public transportation Federal funding and MPOs to establish state of good repair and safety targets.[27] Discussions on these target establishment requirements are not included in this NPRM. Rather, DOT will discuss those target establishment requirements in the subsequent rulemakings to implement these respective provisions.

4. Plans

A number of provisions within MAP–21 require States and MPOs to develop plans that provide strategic direction for addressing performance needs. For the Federal-aid highway program these provisions require: State DOTs to develop an Asset Management Plan; [28] State DOTs to update their SHSP; [29] MPOs serving large TMAs in areas of nonattainment or maintenance to develop a CMAQ Performance Plan; [30] MPOs to include a System Performance Report in the Metropolitan Transportation Plan; [31] and State DOTs and MPOs to include a discussion, to the maximum extent practical, in their Transportation Improvement Program (TIP) as to how the program would achieve the performance targets they have established for the area.[32] In addition, State DOTs are encouraged to develop a State Freight Plan [33] to document planned activities and investments with respect to freight. This rulemaking does not discuss any requirements to develop or how to use these plans, with the exception of some discussion of the CMAQ Performance Plan. Rather, a discussion on the development and use of these plans will be included in the respective rulemakings or guidance to implement these provisions. More information on the required plans and the actions to implement the statutory provisions related to plans can be found on FHWA's MAP–21 Web site.[34]

5. Reports

The MAP–21 sec. 1203 requires State DOTs to submit biennial reports to FHWA on the condition and performance of the NHS, the effectiveness of the investment strategy documented in a State DOT's asset management plan for the NHS, progress in achieving targets, and ways in which a State DOT is addressing congestion at freight bottlenecks.[35] The FHWA proposed in the first NPRM that safety progress be reported by State DOTs through the HSIP annual report and not in the biennial report required under 23 U.S.C. 150(e). This NPRM, under Subpart A, discusses the 23 U.S.C. 150(e) biennial reporting requirement. The 23 U.S.C. 150(e) biennial reporting requirement would apply to all of the non-safety measures for the Federal-aid highway program (*i.e.*, the measures proposed in this NPRM and in the second Performance Measure NPRM).

Additional progress reporting is required under the CMAQ program, Metropolitan transportation planning, elements of the Public Transportation Act of 2012, and the Motor Vehicle and Highway Safety Improvement Act of 2012. Also, State DOTs should include a system performance report in their statewide transportation plan. These reporting provisions are discussed in separate rulemakings and guidance and are not discussed in this rulemaking, with the exception of some reporting required by MPOs as part of the CMAQ program.

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[19] *http://www.fhwa.dot.gov/tpm/about/schedule.cfm.*

[20] 23 U.S.C. 150(c)(3)(A)(iii).

[21] 23 U.S.C. 150(c)(3)(A)(i).

[22] 49 U.S.C. 5326 and 49 U.S.C. 5329.

[23] 23 U.S.C. 150(d).

[24] 23 U.S.C. 134(h)(2)(B).

[25] 23 U.S.C. 134(h)(2), 23 U.S.C. 135(d)(2), 49 U.S.C. 5303(h)(2), and 49 U.S.C. 5304(d)(2).

[26] 23 U.S.C. 402(k); Uniform Procedures for State Highway Safety Grant Programs, Interim final rule, 78 FR 4986 (January 23, 2013) (to be codified at 23 CFR part 1200). An eleventh core outcome measure for bicycle fatalities was added after the publication of the Interim Final Rule and is available at *http://www.ghsa.org/html/resources/planning/index.html.*

[27] 49 U.S.C. 5326(c) and 5329.

[28] 23 U.S.C. 119(e)(2).

[29] 23 U.S.C. 148(d).

[30] 23 U.S.C. 149(l).

[31] 23 U.S.C. 134(i)(2)(C).

[32] 23 U.S.C. 134(j)(2)(D) and 23 U.S.C. 135(g)(4).

[33] MAP–21, sec. 1118.

[34] *http://www.fhwa.dot.gov/map21/qandas/qapm.cfm.*

[35] 23 U.S.C. 150(e).

6. Accountability

Two provisions within MAP–21, specifically 23 U.S.C. 119(e)(7) under the NHPP and 23 U.S.C. 148(i) under the HSIP, and one provision within FAST Act (Section 1116 codified at 23 U.S.C. 167(j)) under NHFP require the State DOT to undertake actions if significant progress is not made toward the achievement of State DOT targets established for these respective programs. The FAST Act Section 1406 modified the NHPP significant progress language and added language for the NHFP. Accordingly, for NHPP and NHFP, if the State DOT has not achieved or made significant progress toward the achievement of applicable targets in a single FHWA biennial determination, then the State DOT must document in its next biennial report the actions it will take to achieve the targets.

Please note that FHWA proposes in section 490.109(e) that FHWA would consider a State DOT has made significant progress toward the achievement of an NHPP or NHFP target when either: (1) The actual condition/performance level is equal to or better than the State DOT established target; (2) or the actual condition/performance is better than the State DOT identified baseline of condition/performance. So the term "achieved or made significant progress" is synonymous with the term "made significant progress" throughout this NPRM. This provision is discussed in the second performance measure NPRM and in this NPRM.

For the HSIP, if the State DOT does not achieve or make significant progress for its HSIP safety targets, then the State DOT must dedicate a specified amount of obligation limitation to safety projects and prepare an annual implementation plan.[36] The first performance measure NPRM discussed this provision, and it is codified in the final rule that covers the safety-related elements of the Federal-aid Highway Performance Measures Rulemaking published on March 15, 2016.

In addition, MAP–21 requires that each State DOT maintain a minimum condition level for Interstate System pavement and NHS bridge conditions. If a State DOT falls below either standard, then the State DOT must spend a specified portion of its funds for that purpose until the minimum standard is exceeded.[37] This provision was discussed in the second performance measure NPRM, which proposed pavement and bridge performance measures for the NHS.

The FHWA recognizes that there is a limit to the direct impact that State DOTs can have on performance outcomes within the State and that State DOTs need to consider this uncertainty in their establishment of targets. The FHWA encourages State DOTs to consult with relevant entities (*e.g.*, MPOs, local transportation agencies, Federal Land Management Agencies, tribal governments) as State DOTs establish targets, so they can better identify and consider factors outside of their direct control that could impact future condition/performance.

Further, MAP–21 includes special safety rules to require each State DOT to maintain or improve safety performance on high risk rural roads and for older drivers and pedestrians.[38] If the State DOT does not meet these special rules, which contain minimum performance standards, then it must dedicate a portion of HSIP funding (in the case of the high risk rural road special rule) or document in their SHSP actions it intends to take to improve performance (in the case of the older driver and pedestrian special rule). Guidance on how FHWA will administer these two special rules is provided on FHWA's MAP–21 Web site.[39]

C. Implementation of MAP–21 Performance Requirements

The FHWA will implement the performance requirements within section 1203 of MAP–21 in a manner that results in a transformation of the Federal-aid highway program so that the program focuses on national goals, provides for a greater level of accountability and transparency, and provides a means for the most efficient investment of Federal transportation funds. In this regard, FHWA plans to implement these new requirements in a manner that will provide Federal-aid highway fund recipients the greatest opportunity to fully embrace a performance-based approach to transportation investment decisionmaking that does not hinder performance improvement. In this regard, FHWA carefully considered the following principles in the development of proposed regulations for national performance measures under 23 U.S.C. 150(c):

- Provide for a National Focus—focus the performance requirements on outcomes that can be reported at a national level.
- Minimize the Number of Measures—identify only the most necessary measures that will be required for target establishment and progress reporting. Limit the number of measures to one or no more than two per area specified under 23 U.S.C. 150(c).
- Ensure for Consistency—provide a sufficient level of consistency, nationally, in the establishment of measures, the process to establish targets and report expectations, and the approach to assess progress so that transportation performance can be presented in a credible manner at the national level.
- Phase in Requirements—allow for sufficient time to comply with new requirements and consider approaches to phase in new approaches to measuring, target establishment, and reporting performance.
- Increase Accountability and Transparency—consider an approach that would provide the public and decisionmakers a better understanding of Federal transportation investment returns and needs.
- Consider Risk—recognize that risks in the target establishment process are inherent and that many factors, outside the control of the entity required to establish the targets, can impact performance.
- Understand that Priorities Differ—recognize that targets need to be established across a wide range of performance areas and that performance trade-offs would need to be made to establish priorities, which would be influenced by local and regional needs.
- Recognize Fiscal Constraints—provide for an approach that encourages the optimal investment of Federal funds to maximize performance but recognize that, when operating with scarce resources, performance cannot always be improved.
- Provide for Flexibility—recognize that the MAP–21 requirements are the first steps that will transform the Federal-aid highway program to a performance-based program and that State DOTs, MPOs, and other stakeholders will be learning a great deal as implementation occurs.

The FHWA considered these principles in this and previous NPRMs and encourages comments on the extent to which the approach to performance measures set forth in this NPRM supports the principles discussed above.

Federal Technical Assistance

The FHWA is committed to providing stewardship to State DOTs and MPOs assisting them as they take steps to manage and improve the performance of the highway system. As a Federal agency, FHWA is in a unique position to utilize resources at a national level to capture and share strategies that can improve performance. The FHWA is prepared to dedicate resources at the national level to provide on-site assistance, technical tools and guidance to State DOTs and MPOs to assist them in making more effective investment decisions. It is FHWA's intent to be engaged at a local and national level to provide resources and assistance from the onset to identify opportunities to improve performance and to increase the chances for full State DOT and MPO compliance of new performance related regulations. The FHWA technical assistance will include activities such as conducting national research studies, developing analytical modeling tools, identifying and promoting best practices, preparing guidance materials, and developing data quality assurance tools. The FHWA encourages comments on how it can help maximize opportunities for successful implementation.

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[36] 23 U.S.C. 148(i).

[37] 23 U.S.C. 119(f).

[38] 23 U.S.C. 148(g).

[39] *http://www.fhwa.dot.gov/map21/guidance/guidehrrr.cfm* and *http://www.fhwa.dot.gov/map21/guidance/guideolder.cfm.*

V. Performance Management Measure Analysis

This section of the NPRM summarizes the process FHWA used to consider potential performance measures, including alternate data sources and potential measures. The FHWA's analysis was based on consideration of viewpoints from several sources including:

- Knowledge of technical experts within DOT and FHWA on the current state of practice for measuring system performance, freight movement, traffic congestion, and on-road mobile source emissions;
- Information provided by external stakeholders received directly or captured as part of organized stakeholder listening sessions;
- Information provided by external stakeholders received indirectly through informal contact such as telephone calls, email, or letters; and
- Measures that have been recommended and documented in nationally recognized reports such as the assessment of measurement readiness documented in the 2011 final report for NCHRP Project 20–24(37)G, "Technical Guidance for Deploying National Level Performance Measurements."

Compared with the two previous NPRMs in this series, the measurement areas covered by this NPRM are more varied from State to State; consequently, stakeholders' consensus about approaches for measuring performance is inconsistent. To aid its analysis of alternate measurement options for this NPRM specifically, FHWA relied on an expanded set of qualitative criteria (which supplement the assessment factors/criteria utilized in the other performance measure NPRMs) to ensure that a set of measures established through this rulemaking would allow for:

- A national performance story to be communicated in a credible and reliable manner;
- State DOTs and MPOs to consider their unique expectations of desirable performance;
- The potential for use across multiple surface transportation modes;
- One core set of data to be used to assess system performance, traffic congestion, and freight movement; and
- The potential utilization of new data as technology progresses.

Section V includes three sub-sections, which describe FHWA's assessment of measures using the expanded set of criteria as well as the assessment factors and criteria used in the two previous performance measure NPRMs:

- Sub-Section A—Analysis and assessment of potential data sources, measurement methodologies, and proposed measures for measuring system performance and traffic congestion;
- Sub-Section B—Analysis and assessment of potential data sources, measurement methodologies, and proposed measures for measuring freight movement, and
- Sub-Section C—Analysis and assessment of potential data sources, measurement methodologies, and proposed measures for measuring on-road mobile source emissions.

Also, each sub-section below describes FHWA's evaluation of the measures using a common methodology to identify gaps that could impact successful implementation of proposed performance measures.

A. Selection of Measures for Subparts E and G—System Performance and Traffic Congestion

This sub-section describes FHWA's analysis of data types, sources, and measurement methods to support potential measures. We also include a brief history of, and lessons learned from, FHWA's research on congestion and reliability performance measures. Lastly, this sub-section describes FHWA's assessment of proposed measures including: (1) Percentage of system providing for reliable travel times; (2) percentage of system providing where peak hour travel times meet expectations; and (3) annual excessive delay per capita.

System Performance and Traffic Congestion Data Types and Sources Considered by FHWA

The FHWA considered several potential data sources for use in measuring system performance and traffic congestion including travel speed and time data, travel volume data, vehicle throughput data, and other trip information on data.

Travel Speed or Travel Time Data—Many State DOTs, MPOs, local agencies, and travel corridor partnerships make use of vehicle speed and travel time data sets to manage system operations or report performance. The FHWA recognizes that travel time or speed does not provide information on the purpose of trip, trip origin and destination, transportation mode, or occupancy rates. However, FHWA has been working to advance the quality of this data. One way FHWA has done this is by acquiring and making available to State and local governments a national travel time data set, the NPMRDS, to support national, State, and local system performance and congestion reporting, research and analysis needs. At this time, FHWA finds that the NPMRDS is the only national travel speed and travel time data source available to State DOTs and MPOs that could reliably support all the performance reporting needs of this rulemaking.

Traffic Volume Data—All State DOTs report annual average daily traffic (AADT) for all Federal-aid eligible roadways to FHWA's HPMS database. All State DOTs also voluntarily provide monthly counts of AADT to FHWA, which FHWA uses to produce monthly national traffic volume trend information.[40] The FHWA believes, however, that traffic volume data offers an incomplete picture of either system performance or traffic congestion because it lacks information about traffic volume by specific times of the day, and because volume counts are based on information collected at a limited number of locations. As these weaknesses do affect the accuracy or value of volume counts, FHWA concluded that volume data would be a poor choice as the sole data source for measuring system performance or traffic congestion.

Traffic Throughput Data—Some researchers and practitioners have used data on the total number of vehicles or persons passing through a specific location during a defined time period to measure system performance and/or traffic congestion. The FHWA believes that performance throughput data is not widely available at a national level nor is it routinely measured on a system-wide basis in States. However, we seek comment on the use and availability of performance throughput data.

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[40] FHWA Traffic Volume Trends: *https://www.fhwa.dot.gov/policyinformation/travel_monitoring/tvt.cfm.*

To measure throughput on the NHS would require near constant vehicle count/volume data that does not exist today except for a very limited number of locations (usually those locations where HPMS requires reporting of volume). Person count data, which would be used for measuring person throughput, is typically based on vehicle occupancy which is typically reported as an average based on surveys (including the U.S. Census) or as a set multiplier to vehicles (*e.g.,* 1.1 occupants per vehicle), although limited counts at single locations on roadways are often undertaken. Classification of vehicles data (for assigning person trips) is also available in a very limited number of locations and would be required for measuring the number of people in buses or vans, for example.

The FHWA concludes that an almost complete lack of data availability makes throughput data impractical as a measure of performance. The FHWA recognizes, however, that improvements in traffic data collection technologies could offer the potential to measure throughput on a system-wide basis in the future.

Other/Trip Information—The FHWA also considered various alternative data types related to trip characteristics that offer insights on system performance and traffic congestion such as typical travel times, trip purpose, and trip origin and destination information. This data is generally collected using surveys, such as the American Community Survey, or regional travel surveys produced by MPOs that sample a statistically representative portion of all travelers. Although surveys of this kind can provide valuable information to help plan and manage transportation demand, FHWA believes the information captured could not easily be used to support a national performance measure because these surveys are administered infrequently and are not referenced to specific locations.

A summary of FHWA's analysis of the viability of various data types to support national measures to assess system performance and traffic congestion is provided in Table 3 below:

TABLE 3—SUMMARY ASSESSMENT OF DATA TYPES FOR USE IN SUPPORT OF NATIONAL MEASURES TO ASSESS SYSTEM PERFORMANCE AND TRAFFIC CONGESTION

Information source	National data source available?	Update frequency	Granularity	Considered for the proposed rule?
Speed or Travel Time	Yes	Monthly	Roadway segment	Yes.
Traffic Volume	Yes	Annual	Roadway segment	Yes.
Throughput	No	Varies	Specific Corridors	No.
Trip Information	Yes	Annual	Regional	No.

Based on the discussion in this section, FHWA considered use of travel time, speed, or traffic volume data to support measures for system performance and traffic congestion.

Request for comments: FHWA recognizes limitations in the availability of data could be resolved in the future with technology advancement. The FHWA seeks comments on potential data sources and technologies related to system performance and traffic congestion measures, including:

1. *Trip Information Data:* The FHWA is seeking comments on approaches for gathering travel, trip origin and destination, transportation mode, or occupancy rates information on a routine and system-wide basis.
2. *Throughput Data:* The FHWA is seeking comment on approaches for gathering throughput data for traffic congestion that would capture the total number of travelers passing through segments that make up a full system on a regular basis.
3. *Survey Data:* The FHWA recognizes that survey data available today offers only limited application to the development of performance measures; technologies available to capture large volumes of data on the movement of people could provide the potential to capture trip-related information that could be useful in managing transportation performance. The FHWA is seeking comment on approaches that can be used to capture trip-related information on a more routine and system-wide basis.

System Performance and Traffic Congestion Measures Considered by FHWA

The FHWA identified and considered a variety of approaches to express travel time, speed, or traffic volume data as measures of system performance or traffic congestion including travel delay, a travel time index, travel time, travel time reliability, or Level of Service. A summary of how these suggestions and approaches were considered by FHWA is provided below:

Travel Delay-Based Measure—Delay is typically a corridor or system-level indicator of additional travel time or slower travel speed when compared to the desired time or the desired speed of travel; it is easily understood by transportation users and is meaningful, expressed in terms of lost time, for all modes of surface transportation. The FHWA finds that many operating agencies use delay metrics to report on and manage system performance; however, the definition of delay varies among agencies. The FHWA acknowledges that delay measures do not capture system performance attributes in terms of shorter trips or better access to destinations and modal options, which may occur at the expense of greater delay. For example, transportation priorities in a region may focus on land use decisionmaking that concentrates populations, resulting in reduced speeds but improving access to destinations and modal options. The FHWA considered these concerns in the design of measures based on delay.

Travel Time Index Measure—A travel time index compares actual travel time for a road segment (typically during the peak period) relative to a reference travel time. The FHWA finds that travel time indices are widely used to report on and manage system performance and traffic congestion. As with delay metrics, FHWA acknowledges that travel time indices do not capture system attributes in terms of shorter trips or better access to destinations and mode options, which may occur at the expense of greater delay. Recognizing that a free-flow speed-based reference travel time may not support regional and local planning policies, FHWA believes it is appropriate for individual State DOTs and/or MPOs to establish reference travel times that support local priorities for certain types of measures.

The FHWA believes that the use of an index provides an effective means to normalize travel times so that the performance can be evaluated across different roadway segments and used to calculate a national performance measure.

Travel Time-Based Measure—A measure calculated using a travel time-based metric would report actual travel times for origin-destination pairs rather than comparing actual travel time to a reference travel time. The FHWA believes that use of travel time by itself as a metric or measure would be difficult for the public to understand without also knowing the associated origin-destination information. The FHWA believes that the use of an index that compares actual travel time to expected travel time is more meaningful to the public.

Travel Time or Speed Reliability Measure—This measure would compare the longest travel time or slowest speed that occurs during a specified time frame to a reference travel time or speed for a transportation facility. A reliability measure is an indication of the extra time a traveler must add to their trip in order to have a high degree of certainty that they will arrive at their destination on time. The FHWA finds that travel time reliability measures are widely used to report on and manage system performance. The FHWA also notes two important refinements that strengthen travel time reliability measures: (1) Some agencies exclude the top 20 percent of longest travel times throughout the year because these travel times typically are due to extreme events that are beyond an agency's control and should not be considered in the assessment of overall system performance; and (2) The reference travel time used in a reliability measure often reflects travel time associated with typical or average travel speeds rather than the time associated with free flow travel speeds.

Level of Service-Based Measure—Some transportation agencies assess the performance of their highways by comparing existing traffic volume to the capacity for which those highways are designed in a measure that is typically referred to as the Level of Service. This approach assumes that as traffic volume reaches the capacity of the system, performance is reduced. However, FHWA believes that an agency can often use operations strategies such as ramp metering or High Occupancy Vehicle lanes to avoid or reduce performance impacts as traffic volume approaches capacity. The FHWA also believes that data on traffic volume information is not sufficiently available on all segments of roadways at all times of the day to use as the only basis for the development of national performance measures.

Impact-Based Measures—Some transportation agencies and planning organizations use measures to report the estimated impacts of increased travel times or reduced travel speeds such as wasted fuel, the value of lost time, or commuter stress levels. The FHWA finds, however, that the information to support such measures is not directly measurable, thereby requiring the use of algorithms that would be difficult to develop in a reliable manner.

A summary of FHWA's analysis of the different approaches for expressing travel time, travel speed, and/or traffic volume considered as part of its efforts to develop measures to assess system performance and traffic congestion is provided in Table 4 below.

TABLE 4—SUMMARY OF ASSESSMENT OF APPROACHES FOR EXPRESSING TRAVEL TIME, TRAVEL SPEED, AND TRAFFIC VOLUME

Approach	Level of stakeholder interest	Considered for the proposed rule?	Considerations
Delay	Mixed	Yes.	
Travel Time as an Index	Low	Yes	Use of an agency defined threshold.
Travel Time	Mixed	No.	
Travel Time Speed Reliability	High	Yes	Consider non-recurring congestion tied to extreme events.
Level of Service	Low	No.	
Impacts	Very Low	No.	

FHWA Congestion and Reliability Performance Measure Research and Analysis

The FHWA has been researching performance measures for congestion, mobility, and reliability for over 10 years. The Urban Congestion Report[41] and Freight Performance Measurement (FPM)[42] have focused on producing performance measures from a variety of sources over the years. Initially, FHWA's research calculated travel times from speed data derived from sensors in or along the roadway, including loop detectors, side-fired radar detectors, video detection, etc. The FHWA research then developed a variety of measures that could be used for trend analysis, such as the Planning Time Index (95th percentile travel time versus free flow travel time) that focuses on the variability (or reliability) of travel day to day, and hours of congestion (hours of day where travel on freeways is under 45 mph), among other measures. The measures were aggregated from roadway sections up to urbanized area-wide measure as well as national measures.

Two issues identified through this research are important to understanding the ultimate approach FHWA proposes for the MAP–21 performance measures related to congestion and system reliability. First, the advent of readily available vehicle-based probe travel time data in recent years has led to a transformation of traveler information and performance measure development. Vehicle-based probe travel time data is derived from in-vehicle, GPS-based probes, including track fleet management devices, navigation units, and cell phones that report location information and time. The travel times are either derived directly from speed data provided or calculated based on a probe's trip progress (deriving speeds from the amount of time taken to travel between two locations and the distance between the two locations). Because data on the entire NHS is available from actual measurements tied to a date, time, and location on specific roadway segments, congestion performance measurement can be much more accurate, widespread, and detailed. This data also provides the potential to undertake before/after evaluations of transportation projects and strategies.

Since the passage of MAP–21, the FHWA acquired vehicle-based probe travel time data from a private vendor for the entire NHS, and acquired the rights for State DOTs and MPOs to also use the data. The data set, the NPMRDS, delivers travel time data, averaged every 5 minutes of every day of the year every month. Travel times are reported for freight-only and for all traffic, which includes all probe data available (passenger, freight, fleet, taxis, etc.).

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[41] *http://ops.fhwa.dot.gov/perf_measurement/ucr/.*

[42] *http://ops.fhwa.dot.gov/freight/freight_analysis/perform_meas/#fhwa.*

The second issue FHWA identified is that aggregating measures up to a national level provides important national trend information but has limited direct correlation to how money is being spent on road improvements that may actually affect changes in the measure. The FHWA has been advocating the use of performance measures at a local level as best practice in recent years. Operating and planning agencies can better understand how a project affects performance on a section of roadway or how a facility or corridor operates during peak periods or weather events using local performance measures, rather than aggregating measure up to a regional, State, or national level.

Applicability of Measures

The FHWA analysis of measures included applicability of measures to the transportation network or geographic area. Section 1203 of MAP–21 directed FHWA to establish measures for States to use to assess the performance of the Interstate System and the non-Interstate NHS. For assessing performance of the non-Interstate NHS, FHWA believes it is important that at least one of the selected measures relate to the entire NHS. Since system reliability is identified as one of the National Goals (23 U.S.C. 150(b)(4)), FHWA decided it was appropriate to establish a reliability-based measure for the entire NHS. Accordingly, the NHPP Performance of the System reliability measure is calculated for the entire NHS.

Another important component of System Performance is congestion, and typically, but not exclusively, the worst congestion occurs on high-volume roads in urbanized areas. The FHWA thought it was important to capture this type of congestion in a measure so that urbanized areas would be able to monitor and address congestion issues. The Peak Hour Travel Time measure was developed to provide this information, limiting the reporting to the largest urbanized areas (over 1,000,000 in population). In selecting this measure, FHWA considered the national goal of congestion reduction, which asks to achieve a significant reduction in congestion on the NHS. 23 U.S.C. 150(b)(3). The FHWA believes the Peak Hour Travel Time measure is consistent with this national goal. The Peak Hour Travel Time measure also gives agencies in the affected urbanized areas the ability to relate their measure to their NHS roadway operational and investment policies by allowing them to set the "Desired Peak Period Travel Time" on their NHS roadways.

Consistent with the purpose of the CMAQ program to fund transportation projects and programs that will contribute to attainment or maintenance of the NAAQS in areas designated as nonattainment and maintenance, FHWA believes that the CMAQ Traffic Congestion measure should apply to nonattainment and maintenance areas and relate to the goals of the CMAQ Program (to improve air quality and relieve congestion). To reduce the burden on some States DOTs and MPOs and to focus on areas where typically the worst congestion occurs, like the System Performance congestion measure, FHWA chose to limit this measure to urbanized areas over 1,000,000 in population as well, since those agencies typically have more capability and experience in assessing traffic congestion. In addition, these areas are the same areas where MPOs will need to report on the CMAQ measures as part of a performance plan under 23 U.S.C. 149(l). Similar to the System Performance congestion measure, FHWA also chose a measure that would be consistent with the national goal of congestion reduction.

Based on a thorough review of data, measure definitions, calculation methods, applicability, and national goals, FHWA identified three potential measures to assess system performance and traffic congestion that deserved further consideration including: Percentage of system providing for reliable travel times; percentage of system where peak hour travel times meet expectations; and annual excessive delay per capita.

The FHWA analyzed these proposed measures for system performance and traffic congestion in tandem as part of this rulemaking so they would provide (1) a complete national picture of system reliability; (2) a focus on urbanized area peak hour congestion; and (3) a focus on the worst traffic delays in air quality nonattainment areas and maintenance areas. In addition, FHWA ensured that the proposed measures (and related metrics) were defined so that their methodologies could be applicable at the same segment, corridor, facility, or other level, resulting in fine grain performance information suitable for supporting the investment decisionmaking process at the statewide, metropolitan, and local levels. Finally, FHWA focused on using as much actual, observed data as is available to develop these measures. Together, these three measures provide a comprehensive picture of system performance, reliability and traffic congestion nationwide, both on the entire NHS and with a focus on areas that typically have the worst congestion.

Assessment of Proposed Measures for Subparts E and G (System Performance and Traffic Congestion)

The FHWA used a common methodology of 12 criteria to assess the appropriateness of each measure for national use and the readiness to implement the performance measure accurately and reliably.

- (A1) Is the measure focused on comprehensive performance outcomes?
- (A2) Has the measure been developed in partnership with key stakeholders?
- (A3) Can the measure accommodate changes in the future?
- (A4) Can the measure be used to support investment decisions, policy making, and target establishment?
- (A5) Can the measures be used to analyze performance trends?
- (A6) Is collection, storage, and reporting of measure data feasible?
- (B1) Timeliness
- (B2) Consistency
- (B3) Completeness
- (B4) Accuracy
- (B5) Accessibility
- (B6) Data Integration

Each performance measure, as used in current practice, was assessed against the 12 criteria using the following three ratings for each criterion.

- Green Rating—Criterion is fully met for the candidate measure
- Yellow Rating—Criterion is partially met for the candidate measure and work is underway to fully meet it the criterion
- Red Rating—Criterion is not fully met or no work is underway or planned that would allow the criterion to be met

The FHWA used the results of this assessment to identify gaps that FHWA could address through this rulemaking to improve the effectiveness of the measures in this NPRM. The rulemaking docket contains a description of the methodology used for this assessment. Table 5 below summarizes the results of the assessment for the proposed performance management measures for system performance and traffic congestion.

TABLE 5—SUMMARY OF PROPOSED PERFORMANCE MANAGEMENT MEASURES FOR SYSTEM PERFORMANCE AND TRAFFIC CONGESTION

Assessment factor	Percentage of system providing for reliable travel	Percentage of system where peak hour travel times meet expectations	Annual hours of excessive delay per capita
(A1) Is the measure focused on comprehensive performance outcomes?	G	G	Y
(A2) Has the measure been developed in partnership with key stakeholders?	Y	Y	Y
(A3) Is the measure maintainable to accommodate changes?	G	G	G
(A4) Can the measure be used to support investment decisions, policy making and target establishment?	G	G	G
(A5) Can the measures be used to analyze performance trends?	G	G	G
(A6) Has the feasibility and practicality to collect, store, and report data in support of the measures been considered?	G	G	G
(B1) Timeliness	G	G	G
(B2) Consistency	G	G	G
(B3) Completeness	Y	Y	Y
(B4) Accuracy	G	G	G
(B5) Accessibility	G	G	G
(B6) Data Integration	G	G	G

The factors that were assessed at a green level for the proposed measures were considered by FHWA in its choice of approach for system performance and traffic congestion measures. The FHWA also considered the factor assessed at yellow (B3—completeness) for all three measures as probe data is available on most of the NHS, but there are still some times of day and locations where data is not consistently available via the NPMRDS data set that FHWA is requiring for use for these measures. The FHWA believes that over time, as more probe data sources are added to the data set, that missing travel times will be minimized.

The FHWA proposal outlined in this NPRM attempts to address some of the gaps that exist today for the lower rated factors so that, when the new requirements are implemented, the measures result in an improved assessment rating, thereby better supporting national programs. In particular, FHWA factored the following considerations in its decision:

- Criterion A1—recognize that the Traffic Congestion measure (Annual Hours of Excessive Delay Per Capita) should ideally reflect the movement of all travelers and the performance of all modes. As proposed, the measure may not capture modal options or better accessibility. The FHWA is seeking comment on methods that can be used reliably to achieve this outcome.
- Criterion A2—recognize that a national measure is not in place for either system performance or traffic congestion and no national pilot studies have been conducted. However, FHWA and many State DOTs and MPOs have developed their own system performance/congestion measures and these were considered in developing the national measures.

The specifics of these proposals are described in the Section-by-Section portion of this proposed rule.

B. Selection of Proposed Measures for Subpart F—Freight Movement on the Interstate System

This sub-section describes the FHWA's analysis of a range of data types and sources and measurement methods to support potential freight movement-related measures and describes FHWA's assessment of two proposed measures including: (1) Percent of Interstate System mileage meeting the goal for reliability; and (2) percent of Interstate System mileage considered uncongested (by speed). The FHWA assessed both these proposed measures in terms of appropriateness as national measures and readiness for implementation.

The FHWA selected reliability and average speed measures because they offered the best understanding of freight performance at the national level and had the widest support from stakeholders. The FHWA seeks to refine the use of freight-related measures in the future and broaden measures and data sources that can better inform future policy, programming, and investment decisions and provide a multimodal consideration of freight flow.

Freight Movement Data Types and Sources Considered by FHWA

The FHWA recognizes that the efficient movement of freight is important to the Nation's economy. Efficiency is hindered by slow speeds and unreliable travel times caused by congested highways. For the freight industry, slow and unreliable travel results in diminished productivity by reducing the efficiency of operations, increasing costs of goods, increasing fuel costs, reducing drivers' available hours for service, and reducing equipment productivity. Reducing highway congestion could produce important benefits for the freight industry and contribute to our Nation's growing economy. Solutions must address the long-term and short-term freight needs and depend on participation from both the public and private sectors to fully understand performance and develop strategic solutions.

Historically, congestion data collection efforts focused exclusively on commuting in urbanized areas. To improve availability of freight data, FHWA launched the FPM program in 2002. This program collects truck travel-time data on major freight-significant corridors, intercity pairs along those corridors, and major U.S. international land-border crossings. Data are collected from embedded probe technology in approximately 600,000 trucks and are used to provide a range of performance measures including but not limited to travel times, speeds, congestion points, incident analysis, and diversions. Although FPM itself is not a system improvement, it is a mechanism for collecting and analyzing data to assist national, State, regional, and local transportation agencies in better measuring and managing highway transportation system performance. The availability of FPM data has the potential to inform future investment decisions that produce benefits of regional and national significance.

The FPM program complements other efforts by FHWA to monitor and measure urban congestion. Combining FPM data with urban congestion data such as HPMS data, economic data from the Freight Analysis Framework, and other relevant data provides a more complete picture of surface transportation system performance and identifies areas where performance could be improved. To provide a comprehensive understanding of freight performance in concert with passenger and total traffic congestion and performance, FHWA procured the NPMRDS in 2013, which provides travel times for all traffic, passenger, and freight with an archive of data beginning in October 2011. The FPM probe data is the freight data that is included in the NPMRDS travel time data. States and MPOs are currently using this data set to develop performance measures and support freight planning and other transportation plans. This data set allows a more comprehensive understanding of congestion for all types of traffic through the calculation of speed, reliability, and travel time on corridors with significant freight movement. As mentioned above, there is widespread support among stakeholders for these types of measures (*e.g.*, speed, reliability, travel time). However, FHWA recognizes that a true picture of freight performance must reflect the multimultimodal nature of freight. In addition to efforts to implement the performance requirements of 23 U.S.C. 150, FHWA expects to continue work currently underway with other modes and public and private freight stakeholders to develop new data opportunities and create additional measures to provide a multimodal and economic assessment of freight. These efforts would further an understanding of freight performance that will support other freight-related provisions within MAP–21 such as freight planning. This work, in addition to FHWA's current efforts for the FPM program, will provide a clearer picture of the total supply chain and goods movement system so that improvements can be even more precisely targeted.

Freight Movement Measures Considered by FHWA

The FHWA focused its evaluation of measures for 23 U.S.C. 150 for freight movement on Interstate on its significant research and leadership in FPM development through the FPM program, and stakeholder input. The FHWA recognizes that freight performance is best depicted by a series of measures to provide a comprehensive picture of freight movement. Stakeholders discussed multimodal measures and suites of measures to show performance in all aspects of freight movement. As the measures required for this rulemaking are only for freight movement on the Interstate System, FHWA is addressing stakeholder requests for multimodal and multiarea measures through other MAP–21 freight requirements such as freight planning and the development of a Freight Conditions and Performance Report (see MAP–21, Section 1115). An additional factor in FHWA's assessment was the varying practices for FPM among stakeholders, including State DOTs and MPOs, resulting in a lack of national consistency on data and measurement. After considering the ongoing research in this area and stakeholder support for FHWA's FPM efforts, FHWA believes that its proposed use of a nationally consistent data set is the most consistent, efficient, and reliable means of understanding Interstate freight movement at the local, State, and national levels.

Assessment of Proposed Measures for Subpart F (Freight Movement)

The FHWA identified two proposed measures: (1) Percent of Interstate System mileage meeting the goal for reliability; and (2) percent of Interstate System mileage considered uncongested (by speed). The two measures proposed by FHWA were evaluated, based on existing state-of-practice, using the assessment process described in Section V.A of this section. Table 6 includes a summary of this assessment.

TABLE 6—SUMMARY OF PROPOSED PERFORMANCE MANAGEMENT MEASURES RELATING TO FREIGHT MOVEMENT

Assessment factor	Percent of interstate system mileage meeting goal for reliability	Percent of interstate system mileage uncongested (by speed)
(A1) Is the measure focused on comprehensive performance outcomes?	G	G
(A2) Has the measure been developed in partnership with key stakeholders?	G	G
(A3) Is the measure maintainable to accommodate changes?	G	G
(A4) Can the measure is used to support investment decisions, policy making and target establishment?	G	G
(A5) Can the measures be used to analyze performance trends?	G	G
(A6) Has the feasibility and practicality to collect, store, and report data in support of the measures been considered?	G	G
(B1) Timeliness	G	G
(B2) Consistency	G	G
(B3) Completeness	Y	Y
(B4) Accuracy	G	G
(B5) Accessibility	G	G
(B6) Data Integration	G	G

Legend: G = Green; Y = Yellow; R = Red.

The measures proposed by FHWA were considered against the criteria presented in Table 6. For all of the assessment factors except completeness, FHWA ranked these measures as "green." The FHWA considered the measures against all of the criteria and weighed public and private stakeholder input along with FHWA's experience in applying the measures. These measures were determined to be the two measures that most appropriately met all of the assessment factors and provide a comprehensive assessment of performance for freight so that public and private decisionmakers can identify policy and operational improvements for goods movement. The FHWA considered the measures to be "yellow" for completeness only because they are proposed to rely on data from the NPMRDS, which has limited missing data that could impact the ability to conduct a complete assessment of freight movement on the Interstate. While a robust data set, the NPMRDS does exhibit limitations, especially with missing travel time data when no probe passes a location in a 5-minute period (referred to as 5-minute bins). For the freight data, the NPMRDS uses a sample of approximately 600,000 trucks. The probes that are used to derive travel times in the NPMRDS generally provide national coverage. However, there are some areas of the Nation where there are fewer trucks or no truck activity reported. When this occurs, these bins would not be reported in the NPMRDS, and are missing from the dataset. The FHWA's internal assessment has demonstrated that, even with the missing data, the measures could still be calculated because the measures are based on annual averages. There are not enough missing 5 minute bins to make calculating the measure impossible. The FHWA recognizes the need to improve the completeness of the data and continues to work to improve this data set and include more trucks. It is expected that the truck sample will grow exponentially in coming years and over time the addition of more probe sources will reduce missing travel times.

C. Selection of Proposed Measures for Subpart H—On-Road Mobile Source Emissions

The following section includes an overview of the factors FHWA considered in the selection of a proposed measure for the assessment of on-road mobile source emissions as required to administer the CMAQ program under 23 U.S.C. 149. (The previous section discusses proposed measures for Traffic Congestion to carry out the CMAQ program.) The FHWA wants the measure established through this rulemaking to:

- Meet CMAQ program performance requirements in 23 U.S.C. 149 and 150.
- Be mindful of existing emissions reduction reporting practices and data sets, thereby minimizing any additional burden on State DOTs and MPOs.
- Apply to CMAQ-funded projects instead of focusing on one project type (*e.g.*, highways or transit).
- Apply to CMAQ-funded projects only in areas designated as nonattainment and maintenance for pollutants applicable to the CMAQ program (ozone (O_3), carbon monoxide (CO), and particulate matter (PM)) versus all areas.

The FHWA received viewpoints on suggested measures as discussed above in Section III, Discussion of Stakeholder Engagement and Outreach. In addition, FHWA considered measures in use today to report on-road mobile source emissions reduction estimates. After consideration, FHWA identified four possible measures for preliminary consideration:

(1) Emission Reductions by Pollutant—A measure of the estimated emissions reduced by CMAQ-funded projects within a nonattainment or maintenance area. The emissions reductions would be calculated by pollutant and their applicable precursors.

(2) Estimated Emission Reductions of CMAQ-Funded Projects Relative to Total Emission Reductions of the Nonattainment or Maintenance Area—A measure that expresses the emissions reduced by CMAQ projects as a percentage of total emission reductions. Total emission reductions are calculated by taking the difference between the estimated emissions of all transportation projects and the total allowable emissions (*i.e.*, emissions budget) within the nonattainment or maintenance area.

(3) Estimated Emissions Reduction of CMAQ-Funded Projects Relative to Total Emissions of the Nonattainment or Maintenance Area—A measure that expresses the emissions reduced by CMAQ-funded projects as a percentage of total emissions in the nonattainment or maintenance area. Total emissions would be obtained from the regional emissions estimates prepared for the conformity determination for the nonattainment or maintenance area.

(4) Cost Effectiveness of CMAQ Projects—A measure that compares the total amount of CMAQ funds spent in an area to estimated emissions reduced by those CMAQ projects.

Assessment of Potential Measures for Subpart H

The FHWA assessed the four potential on-road mobile source emission measures based on state-of-practice among States and MPOs and using the 12 criteria described in Section V.A. Table 7 below summarizes the results of this assessment.

TABLE 7—SUMMARY OF PROPOSED PERFORMANCE MANAGEMENT MEASURES FOR ON-ROAD MOBILE SOURCE EMISSIONS

Assessment factor	Emission reductions by pollutant	Estimated emission reductions of CMAQ-funded projects relative to total emission reductions of the area	Estimated emission reductions of CMAQ-funded projects relative to total emissions of area	Cost effectiveness of CMAQ projects
(A1) Is the measure focused on comprehensive performance outcomes?	G	G	G	G
(A2) Has the measure been developed in partnership with key stakeholders?	G	R	R	R
(A3) Is the measure maintainable to accommodate changes?	G	G	G	G
(A4) Can the measure be used to support investment decisions, policy making and target establishment?	G	Y	Y	G
(A5) Can the measures be used to analyze performance trends?	G	G	G	G
(A6) Has the feasibility and practicality to collect, store, and report data in support of the measures been considered?	G	Y	Y	Y
(B1) Timeliness	Y	Y	Y	Y
(B2) Consistency	Y	Y	Y	R
(B3) Completeness	Y	Y	Y	R
(B4) Accuracy	G	Y	Y	R
(B5) Accessibility	G	G	G	R
(B6) Data Integration	Y	R	R	R

Legend: G = Green; Y = Yellow; R = Red.

Based on the assessment summarized above and the additional principles described in this section, FHWA concluded that the last three measures were not suitable because they did not provide useful information for establishing targets, were not developed with key stakeholders, or in the case of cost effectiveness, data was not readily available. The measure that best fits the criteria established by FHWA was emissions reduction by pollutant. With respect to this measure, FHWA considered the following:

- Criterion B1—Measure recognizes that emissions are estimated, not measured, based on the expected benefit from building the project. Collecting emissions data on a project-by-project basis through vehicle probing or another means would be cost prohibitive and would take years to collect useable data.
- Criteria B2 and B3—Measure recognizes that no consistent method is being used across the country to estimate CMAQ project emission reductions and that although quantitative emissions analyses of air quality impacts is expected for almost all project types, qualitative assessments are acceptable when it is not possible to accurately quantify emissions reductions (*i.e.,* public education, marketing and other outreach efforts). The FHWA is conducting a number of research studies to develop tools to assist with consistency and completeness of emissions estimates, for those project types where it is possible to quantify emissions, but these tools will take time for FHWA to develop.
- Criterion B6—While the CMAQ Public Access System does include estimated emissions reductions by pollutant by project for each MPO and State that receives CMAQ funds, this database is not integrated with performance-related data such as a spatial component. Work is underway to improve and increase the functionalities of the database to support the performance planning activities.

The FHWA is proposing this approach to define the on-road mobile source emissions measure in a manner that is consistent with and reflects the various methods used today by State DOTs and MPOs to calculate on-road mobile source emissions and is consistent with the information received from stakeholders. The specifics of this proposal are described in the Section-by-Section portion of this proposed rule.

D. Consideration of a Greenhouse Gas Emissions Measure

The FHWA is seeking comment on whether and how to establish a CO_2 emissions measure in the final rule. The FHWA received input through stakeholder listening sessions and various letters (available in the docket) suggesting that DOT add a GHG emissions measure because GHGs are correlated with fuel use and air toxins. One group of commenters specifically asked for a carbon emissions measure for mobile sources. However, it is clear that reducing CO_2 emissions is critical and timely. On-road sources account for over 80 percent of U.S. transportation sector GHGs. In an historic accord in Paris, the U.S. and over 190 other countries agreed to reduce GHG emissions, with the goal of limiting global temperature rise to less than 2 °C above pre-industrial levels by 2050.

According to the Intergovernmental Panel on Climate Change (IPCC), human activity is changing the earth's climate by causing the buildup of heat-trapping greenhouse gas emissions through the burning of fossil fuels and other human processes.[43] Transportation sources globally have been a rapidly increasing source of GHGs. Since 1970, GHGs produced by the transportation sector have more than doubled, increasing at a faster rate than any other end-use sector. The GHGs from total global on-road sources have more than tripled, accounting these sources account for more than 80 percent of the increase in total global transportation GHG emissions.[44] In the U.S., GHG emissions from on-road sources represent approximately 23 percent of economy-wide GHGs, but have accounted for more than two-thirds of the net increase in total U.S. GHGs since 1990,[45] during which time VMT also increased by more than 30 percent.[46]

A well-established scientific record has linked increasing GHG concentrations with a range of climatic effects, including increased global temperatures that have the potential to result in dangerous and potentially irreversible changes in climate and weather. In December 2015, the Conference of Parties nations recognized the need for deep reductions in global emissions to hold the increase in global average temperature to well below 2 °C above pre-industrial levels, and are pursuing efforts to limit temperature increases to 1.5 °C. To that end, the accord calls on developed countries to take a leadership role in identifying economy-wide absolute emissions reduction targets and implementing mitigation programs. Also, as part of a 2014 bilateral agreement with China, the U.S. pledged to reduce GHG emissions to 26–28 percent below 2005 levels by 2025, with this emissions reduction pathway intended to support economy-wide reductions of 80 percent or more by 2050.

The FHWA recognizes that achieving U.S. climate goals will likely require significant GHG reductions from on-road transportation sources. To support the consideration of GHG emissions in transportation planning and decisionmaking, FHWA has developed a variety of resources to quantify on-road GHG emissions, evaluate GHG reduction strategies, and integrate climate analysis into the transportation planning process. The FHWA already encourages transportation agencies to consider GHG emissions as part of their performance-based decisionmaking, and has developed a handbook to assist State DOTs and MPOs interested in addressing GHG emissions through performance-based planning and programming.[47] The FHWA has developed tools to help State and local transportation agencies address GHG emissions associated with their systems. These include the Energy and Emissions Reduction Policy Analysis Tool (EERPAT),[48] a model that evaluates the impacts of CO_2 reduction policies for surface transportation, and the Infrastructure Carbon Estimator (ICE),[49] a tool that specifically evaluates CO_2 associated with the construction and maintenance of transportation infrastructure. The FHWA is also currently conducting a number of pilots to analyze the potential GHG emission reductions associated with various transportation-related mitigation strategies.[50] Even with these efforts, FHWA recognizes that more will be needed to meet the U.S. climate goals.

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[43] The IPCC Document: IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. *http://mitigation2014.org/report/summary-for-policy-makers.*

[44] Sims, et al. 2014: Transport: In Climate Change 2014, Mitigation of Climate Change. *http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_full.pdf.* Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. p. 605. *http://ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_chapter8.pdf.*

[45] This is the first year of official U.S. data.

[46] U.S. Environmental Protection Agency, 2015. Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2015. Washington, DC. Tables 2–1 and 2–13. Federal Highway Administration, 2013 Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance. Washington, DC. Exhibit 1–3. *https://www3.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2016-Main-Text.pdf.*

[47] A Performance-Based Approach to Addressing Greenhouse Gas Emissions through Transportation Planning, available at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/publications_and_tools/ghg_planning/ghg_planning.pdf.*

[48] The Energy and Emissions Reduction Policy Analysis Tool (EERPAT), available at *https://www.planning.dot.gov/FHWA_tool/.*

[49] The Infrastructure Carbon Estimator (ICE), available at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/publications_and_tools/carbon_estimator/.*

The FHWA is considering how GHG emissions could be estimated and used to inform planning and programming decisions to reduce long term emissions. If FHWA were to establish a measure, we believe that, in the context of this rulemaking, GHG emissions would be best measured as the total annual tons of CO_2 from all on-road mobile sources. The FHWA is seeking comment on the potential establishment and effectiveness of a measure as a planning, programming, and reporting tool, and how we could address the following considerations in the design of a measure:

- Should the measure address all on-road mobile sources or should it focus only on a particular vehicle type (*e.g.,* light-duty vehicles)?
- Should the measure be normalized by changes in population, economic activity, or other factors (*e.g.,* per capita or per unit of gross state product)?
- Should the measure be limited to emissions coming from the tailpipe, or should it consider emissions generated upstream in the life cycle of the vehicle operations (*e.g.,* emissions from the extraction/refining of petroleum products and the emissions from power plants to provide power for electric vehicles)?
- Should the measure include non-road sources, such as construction and maintenance activities associated with Title 23 projects?
- Should CO_2 emissions performance be estimated based on gasoline and diesel fuel sales, system use (vehicle miles traveled), or other surrogates?
- Due to the nature of CO_2 emissions (*e.g.,* geographic scope and cumulative effects) and their relationship to climate change effects across all parts of the country, should the measure apply to all States and MPOs? Is there any criteria that would limit the applicability to only a portion of the States or MPOs?
- Would a performance measure on CO_2 emissions help to improve transparency and to realign incentives such that State DOTs and MPOs are better positioned to meet national climate change goals?
- The target establishment framework proposed in this rulemaking requires that States and MPOs would establish 2 and 4 year targets that lead to longer term performance expectations documented in longer range plans. Is this framework appropriate for a CO_2 emissions measure? If not, what would be a more appropriate framework?
- Should short term targets be a reflection of improvements from a baseline (*e.g.,* percent reduction in CO_2 emissions) or an absolute value?
- What data sources and tools are readily available or are needed to track and report CO_2 emissions from on-road sources?
- What tools are needed to help transportation agencies project future emissions and establish targets for a CO_2 emission measure?
- How long would it take for transportation agencies to implement such a measure?
- Additionally, the FHWA requests data about the potential agency implementation costs and public benefits associated with establishing a CO_2 emissions measure.

VI. Section-by-Section Discussion of the General Information and Proposed Performance Measures Sections

This section discusses how the proposed regulations address MAP–21's charge to establish performance measures for State DOTs and MPOs to use to assess: The performance of the Interstate System and non-Interstate NHS for the purpose of carrying out the NHPP; freight movement on the Interstate System; and traffic congestion and on-road mobile source emissions for the purpose of carrying out the CMAQ program. Subpart A discusses common aspects of the proposed rulemaking related to definitions, reporting, significant progress determination, and target establishment. Discussion of the performance measures is organized into four subparts covering three performance areas, including: Subpart E, which discusses proposed measures to assess performance of the NHS; Subpart F, which discusses the proposed measure to assess freight movement on the Interstate System; and Subparts G and H, which discuss the proposed CMAQ measures to assess traffic congestion and on-road mobile source emissions, respectively.

Subparts E, F, G, and H of the proposed regulations provide the requirements for the system performance, traffic congestion, freight movement, and on-road mobile source emissions measures, including any required methodologies for data collection, data requirements, and processes for calculating the measures. The Section-by-Section discussion also addresses procedural discrepancies in data collection and reporting, and attempts to align them using the latest research and state-of-the-practice experience to provide consistent national performance measures.

A. Common Issues Across Subparts E, F, and G

The FHWA established and followed certain standards in the development of the requirements proposed in Subparts E, F, and G. For example, for the proposed rules associated with assessing the performance of the NHS, freight movement on the Interstate, and traffic congestion, FHWA attempted to use a consistent framework and structure, to the extent possible, because the performance measures associated with these subparts are largely based on vehicle travel times and speeds. The following sub-sections summarize the overarching framework and guiding principles used across these subparts. Information related to the development of the requirements proposed in Subpart H is discussed separately.

Measures That Focus on Outcomes for Assessing the Performance of the NHS, Freight Movement on the Interstate, and Traffic Congestion

Transportation performance outcomes can be impacted through the use of a wide range of strategies that support the transportation priorities and policies of local areas. In its decisionmaking to develop proposed measures, FHWA was careful to avoid any measures that would impact the ability of a State DOT or MPO to make decisions that work for the local area. For this reason, FHWA focused only on measures that track transportation performance where outcomes could tell a national story.

The proposed measures in Subparts E, F, and G of this rulemaking focus primarily on the consistency and efficiency of travel times on our Nation's highways. Improvements to this outcome could be the result of a wide range of strategies such as those that would improve the operations of highway facilities and those that would decrease the demand on highway facilities by providing alternative transportation choices. The FHWA believes that the selection of these strategies is a local decision and should not be influenced directly by the measure itself. For this reason, FHWA elected not to propose measures that would directly measure the implementation of strategies to improve system operations (*i.e.,* percent modal use, or number of managed lanes).

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[50] FHWA's Greenhouse Gas/Energy Analysis Demonstration projects are described at *http://www.fhwa.dot.gov/environment/climate_change/mitigation/ongoing_and_current_research/.*

Measures That Use Travel Time Data for Assessing the Performance of the NHS, Freight Movement on the Interstate, and Traffic Congestion

This rulemaking's proposals for subparts E, F, and G (performance of the NHS, freight movement on the Interstate, and traffic congestion-related measures) are based on travel times or travel speeds of highway users. Travel times and speeds are being proposed as the basis for these measures as FHWA feels that this information accurately reflects highway operational performance and that the data can be captured across the full NHS in an accessible national data source in a timely and reliable manner. The FHWA is proposing the use of the new NPMRDS as the data source to calculate the metrics for the seven travel time/speed based measures to ensure consistency and coverage at a national level. This data set provides travel times representative of all traffic (freight and passenger vehicles) traveling on the NHS and captures this information every 5 minutes throughout every day of the year. The FHWA expects to continue to provide this data set to State DOTs and MPOs as long as there is a need at a national level for this information. The proposed regulations allow State DOTs to use alternative data sources provided the data set is considered at least equivalent in quality, coverage, and timeliness to the NPMRDS and is approved by FHWA. States DOTs and MPOs have the option to relate the travel time data provided in the NPMRDS to their relevant location referencing system (typically used for transportation planning).

As proposed in section 490.103, States and MPOs shall cooperatively develop and share information related to transportation systems performance data. The transportation systems performance data would include the travel time data set, the selected reporting segments, and the desired peak period travel time required for use under subparts E, F, and G.

When the State DOT selects the travel time data set, it must coordinate with the MPOs in the State that are subject to creating the metrics and measures in subparts E, F, and G. When the State selects the reporting segments and the Desired Peak Period Travel Time for a particular reporting segment, State DOTs must coordinate with the applicable MPOs that contain the reporting segment within their metropolitan planning area boundary. States and MPOs must use the same data (the travel time data set, the reporting segments, and the desired peak period travel time for a reporting segment) for the purposes of calculating the metrics and measures.

Dealing With Missing Data When Assessing the Performance of the NHS, Freight Movement on the Interstate, and Traffic Congestion

Travel times and speeds of highway users may be captured from a variety of sources such as mobile phones, vehicle transponders, portable navigation devices, roadway sensors, and cameras. It is possible that during the day, during specific 5-minute intervals, travel time or speed data cannot be captured. Five-minute bins without data would not be reported in the NPMRDS, and would therefore be considered missing. This can occur due to one of the following reasons:

- Reason 1—No users traveled on the roadway during the 5-minute interval, or
- Reason 2—Travel occurred on the roadway but no sources of data were recognized (*i.e.,* mobile phones, vehicle transponders, portable navigation devices), or
- Reason 3—Equipment failure (*e.g.,* sensor malfunction, communication system failure).

The FHWA believes that, although missing data is possible due to Reason 2 listed above, the likelihood of this condition occurring will decrease over time as data capture technologies advance and as a greater percentage of highway users carry equipment that allows them to become viable travel time data sources. The FHWA also believes that it is valid to assume that travel occurring under the conditions that would result in missing data for Reason 1 would be consistent with free flow travel speeds. Lastly, for Reason 3, FHWA realizes that there are times when equipment used to capture data may fail because of usage, damage, or other causes. The FHWA believes this will be a more infrequent cause of missing information than Reason 1. For these reasons, FHWA is proposing in this rulemaking that missing travel time data be assumed to be occurring due to Reason 1 for purposes of the reliability measures (both freight and system performance) on the Interstate and, consequently, assumes travel times that are consistent with posted speed limits when data is missing.

The FHWA found, after analysis of missing data in the NPMRDS (a white-paper on missing data/outliers' impact on proposed measures is included in the docket), that there was currently sufficient data for the Interstate so States and MPOs could establish reasonable targets. However, the analysis also demonstrated that at the current time there is enough missing data for the non-Interstate NHS that it could impact the ability of States and MPOs to establish targets. Accordingly, FHWA is proposing that the non-Interstate reliability measures would be phased in, giving the States and MPOs an opportunity to understand the impact of missing data on target establishment and time for the NPMRDS to become more complete.

Regarding the peak hour travel time measures, which include both the Interstate and non-Interstate NHS, the measures rely on hourly average travel times. Missing data does not have the same impact on target establishment for the peak hour travel time measures as it does for the reliability measures. So, FHWA proposes no replacement of missing data for either of the peak hour measures. However, in its analysis of the data, FHWA noted that outliers could have an effect on these measures, so FHWA is proposing that States and MPOs remove extreme outliers (*i.e.,* those travel times at speeds less than 2 mph and over 100 mph) from the data set before calculating the peak hour measures. These outliers are further discussed in a white-paper on missing data/outliers' impact on proposed measures, which is included in the docket.

Missing data potentially could have an impact on target establishment for the traffic congestion measure (Annual Hours of Excessive Delay Per Capita). Because this is a delay measure that sums all the delay identified on segments, missing data could mean missing some delay in calculating the measure. This could make it difficult for States and MPOs to achieve targets due to more complete data may be available in the future. The FHWA is proposing that this measure would be phased in, to allow States and MPOs time to understand the impact of missing data on establishing targets, and for the NPMRDS to become more complete.

As mentioned, a white-paper on missing data/outliers' impact on proposed measures is included in the docket. This paper includes information on options such as applying a path-type processing that uses the actual observations of the vehicles on segments adjacent to those segments with missing data and that traversed the segment with missing data to fill in the missing travel times, and the impacts of trimming the data at 2 and 100 mph. The FHWA is seeking comment on this process and other processes that FHWA should consider to improve missing data and outlier impacts.

Phasing in Target Establishment Requirements for Less Mature Measures

The FHWA is proposing a phased-in approach to the establishment of targets for both the non-Interstate NHS reliability measure and the traffic congestion (excessive delay) measure. The phased-in approach would provide 2 years for data coverage on non-Interstate NHS roadways to be more complete and for States and MPOs to understand the impacts of missing data on establishing targets. The completeness of travel time data in the NPMRDS is greater for the Interstate as compared to other NHS roadways. The FHWA believes that the completeness of data in the NPMRDS will improve over time as sources become more prevalent (missing data is discussed in a white paper provided on the docket). The FHWA also believes that State DOTs have more experience in collecting and reporting reliability and congestion performance on the Interstate as compared to other NHS roadways and, as a result, are more readily capable to establish targets for the Interstate System. However, missing data for the non-Interstate NHS may lead to uncertainty for State DOTs and MPOs as they establish targets. Giving time to State DOTs and MPOs to establish targets for the non-Interstate NHS may help them learn how to manage that uncertainty. For these reasons, FHWA believes that a phased approach to target establishment is appropriate for those measures that are derived from data on the non-Interstate NHS.

Travel Time Reliability for Assessing the Performance of the NHS and Freight Movement on the Interstate

The FHWA heard consistently from stakeholders that managing the travel time reliability of the highway network is important and should be considered as part of this rulemaking. For this reason, as part of this rulemaking FHWA is proposing the establishment of travel time reliability measures. In general, the proposed reliability measures address: (1) The reliability of the entire NHS for all travelers; and (2) the reliability of the Interstate System for longer haul freight movements. Reliability focuses on variability in travel times, and the travel time measures in this rulemaking focus on identifying portions of the NHS and Interstate (for freight) that have high levels of unreliable travel. An example of unreliable travel is a trip that takes 30 minutes on a typical day but could take over 45 minutes on a random day. This extra trip time might be due to a road or lane closure, a traffic accident, or bad weather. The FHWA intends that the measure for reliability of the NHS for all travelers would be used to identify the areas of the transportation network where there are the greatest impacts on travel when non-recurring incidents occur. Non-recurring incidents include temporary disruptions, such as incidents ranging from a flat tire to an overturned hazardous material truck, work zones, weather, and special events. In contrast, the proposed measure for freight travel time reliability is based only on freight travel and considers the longest travel times experienced as compared to travel times more likely during normal travel time conditions throughout all hours of the day. The index provided by this reliability measure is an important piece of information for shippers and suppliers so they can plan for a higher likelihood of on-time arrivals of deliveries. These reliability measures are discussed in more detail in the section-by-section portion of this NPRM.

Travel Time Delay for Assessing Freight Movement on the Interstate and Traffic Congestion

The FHWA is proposing two measures to assess traffic congestion: (1) One measure to represent congestion impacting freight movement, which is proposed in Subpart F; and (2) One measure to represent overall traffic congestion, which is proposed in Subpart G. Although both proposed measures use delay as the basis for determining congestion, the two differ in design and intended purpose.

The first proposed congestion measure related to freight movement is focused on delay and is intended to be used to assess delay that could occur on the Interstate System. This proposed delay measure represents the percentage of the Interstate System that is uncongested as defined by a speed threshold of 50 mph. The FHWA aimed to understand the point of inflection to consider speeds and viewed 50 mph as appropriate for this measure. This is due in part because trucks often have speed governors installed on them so that they cannot travel much faster than 55 mph. Additionally, freight stakeholders commented that 50 mph or greater is where they would like to be in terms of average speed. The FHWA is seeking comment on this threshold.

The second proposed measure, related to traffic congestion and focused on Annual Hours of Excessive Delay Per Capita, is intended to be used to assess delays that FHWA believes would be considered excessive by users of the NHS roadways in large urbanized areas. This proposed delay measure is an indication of the additional time spent by all users of the system (quantified by the total estimated vehicles using the system) when traveling at speeds considerably lower than typical speed limits. In addition, this measure is proposed to be only applicable to the largest urbanized areas in the country: The portion of those that exceed a population of 1 million.

Reliable Performance for the NHS and Freight Movement on the Interstate

Three of the eight measures proposed in this rulemaking focus on measuring reliable performance: (1) Section 490.507(a)(1) Percent of the Interstate System providing for reliable travel times, (2) Section 490.507(a)(2) Percent of the non-Interstate NHS providing for reliable travel times, and (3) Section 490.607(a) Percent of the Interstate System Mileage providing reliable truck travel times. The discussions provided in this section provide an explanation of how "reliable" performance is defined, understanding that the meaning of this term can be very subjective, especially when discussing outcomes that are derived from travel time and speed data. Each of the measures that focus on "reliable" performance includes a clearly defined calculation to remove any subjectivity in the meaning of the term. As discussed above, FHWA is proposing measures that, although they include similar methods of calculation, would be used to assess different aspects of highway performance. In general, reliable performance for the five proposed measures can be grouped as follows:

- Subpart E—Travel time reliability as being *reliable for highway users;*
- Subpart F—Truck travel time reliability as being *reliable for shippers and suppliers.*

Additional discussion is provided in each subpart to explain the method used to identify the percentage of the transportation network that would be considered "reliable" to these different users and stakeholders.

Impact of Traffic Volumes on Travel Time Derived Measures

The measures being proposed in this rulemaking that are derived from travel times reflect: System reliability, peak hour travel times, truck congestion, and excessive delay. With the exception of excessive delay, FHWA did not factor the volume of traffic in the calculations for these proposed measures. Consequently, these measures do not directly capture the weight of traffic volumes in the results. Rather, the measures are calculated based on the length of roadway segments. Table 8 below provides a very simple example to illustrate the impact of traffic volume on the measure calculation:

TABLE 8—AN EXAMPLE TO ILLUSTRATE THE IMPACT OF TRAFFIC VOLUME ON THE MEASURE CALCULATION

Road segment length (direction-miles)	Annual traffic volume (thousands of vehicles)	Reliable?	Length reliable (direction-miles)	Vehicle miles reliable (thousands)	Vehicle miles traveled (thousands)
5	2,700	Yes	5	13,500	13,500
1	73,000	No	0	0	73,000
3	5,000	Yes	3	15,000	15,000
6	1,700	No	0	0	10,200
2	50,000	Yes	2	100,000	0
2	18,000	Yes	2	36,000	36,000
1	75,000	Yes	1	75,000	75,000
Total = 20			Total = 13	Total = 239,500	Total = 322,700

In this simplified example using a mileage based approach 13 direction-miles, or 65.0 percent (13/20), of the network would be considered "reliable," and using a volume weighted approach 239,500 VMT, or 74.2 percent (239,500/322,700), of the VMT would have been "reliable." This example illustrates the differences in these two approaches.

Except for the excessive delay measure, FHWA elected to use a mileage based approach and not to weigh the measures by volume due to the absence of data regarding actual traffic volumes particularly for the level of roadway coverage and granularity needed (entire NHS and 5-minute temporal granularity). The system reliability, peak hour travel times, and truck congestion measures are intended to evaluate system performance. This objective can be achieved by analyzing performance on roadway segments and then indicating, via roadway segment length, whether or not a segment is performing to a satisfactory level (based on thresholds defined in this rule). If actual, observed volumes were available at these roadway segment levels every 5 minutes as well, an optional approach would be to identify the amount of VMT that met the measure thresholds, as demonstrated in Table 8. This would require actual volume counts every 5 minutes for every NHS road segment, data which do not currently exist. The FHWA believes it would be inappropriate to introduce estimated data for these measures, which are otherwise focused on actual data. As a result, FHWA is proposing the use of roadway segment length as the means for reporting the metrics and measures.

In addition, FHWA believes performance expressed as the percent of the system mileage is more easily understood by the public as compared to measures that would be expressed as the percentage of vehicle miles traveled. The FHWA encourages State DOTs and MPOs to consider strategies that would provide the greatest impact to improving the performance of overall traffic volumes by focusing on roadway segments that carry higher volumes of traffic.

The Total Excessive Delay measure, on the other hand, needs to be weighted by something to be meaningful, as it is basically a sum of all the excessive travel times on the NHS in an urban area. If excessive delay during a 5 minute period (say 5 seconds) were simply totaled for every 5 minute period and roadway segment, then the excessive delay travel time on a roadway segment with one car would be equivalent to a roadway segment with 110 cars. Such an analysis would not capture the scope of the delay (how many vehicles are actually experiencing that 5 second excessive travel time). Hourly volumes (of vehicles) are a typical means of weighting delay measures. Therefore, for the Total Excessive Delay measure, FHWA requires development of hourly volumes based on actual vehicle counts or estimated from AADT (an estimated number from limited vehicle count data). State DOTs and MPOs can develop hourly volume estimates with AADT information provided to HPMS every year for their NHS roadways. In this case, using the best-available data, even if it is estimated, is preferable than not using such data, because DOTs and MPOs would have difficulty setting targets for this measure without weighting it by the number of vehicles experiencing the delay.

The FHWA is seeking comments on this approach and encourages comments suggesting alternative methods that may more effectively capture the impact of performance changes on differing levels of system use.

Focus on Large Urbanized Areas for Assessing the Performance of the NHS and Traffic Congestion

In addition to travel time reliability, FHWA is proposing travel time or speed based measures to assess and manage the worst areas of delay or congestion in large urbanized areas. The FHWA felt that this type of measure was most applicable to urbanized areas where populations are greater than 1 million, as these areas are where delay is most likely to occur, and where State DOTs and MPOs likely have a greater level of capability, experience, and need to manage the traffic operations. As proposed, three of the seven travel time or speed based measures are limited to these large urbanized areas. They are: (1) Section 490.507(b)(1) Percent of the Interstate System where peak hour travel times meet expectations, (2) section 490.507(b)(2) Percent of the non-Interstate NHS where peak hour travel times meet expectations, and (3) section 490.707 Annual Hours of Excessive Delay Per Capita. The peak hour travel time measures capture congestion only during peak periods of use (commute-related congestion) and the annual hours of excessive delay per capita captures congestion throughout the day (overall delay).

The FHWA is proposing that only urbanized areas over 1 million in population would be subject to these measures because of the additional performance-reporting requirements that these areas, which are also nonattainment or maintenance areas, have to complete for the CMAQ-related measures (23 U.S.C. 149(l)) including Annual Hours of Excessive Delay per Capita. By requiring MPOs in these areas to do additional CMAQ performance reporting, Congress placed a special emphasis on these larger urbanized areas. The FHWA considered this emphasis when it evaluated whether all areas or only a smaller subset of areas within a State should be subject to the traffic congestion measure.

In FHWA's experience, areas over 1 million in population are generally more complex from a transportation perspective. Those areas have more population, resulting in more trips. These areas also tend to have a variety of transportation options available, including highways, airports, commercial rail. In more concentrated urban environments, the areas may also be more constrained in terms of where any new facilities to accommodate demand can be located. There also may be higher costs for right-of-way acquisition. For all these reasons, FHWA's experience is that transportation planning in these larger urban areas is generally more complex than in areas less than 1 million in population, resulting in a greater need to manage the transportation system and, specifically, traffic operations. In addition, these larger areas do receive more Surface Transportation Program suballocated funding than smaller areas (see 23 U.S.C. 133(d)). For all these reasons, FHWA believe it is important that these areas look more closely peak hour travel times and excessive delay as they are managing traffic operations.

The FHWA also considered whether the measure should apply: To another subset of areas within the State, such as areas where MPOs serve a TMA[51] as these areas may have more experience with the congestion management process provided for in 23 U.S.C. 134(k); to all urbanized areas within the State; or to the entire State. Because of the additional burden involved in measuring peak hour and traffic congestion, FHWA is proposing that only urbanized areas where populations are greater than 1 million in population would be subject to these measures. The FHWA is requesting comment on: Whether a population threshold should be used for determining the measure applicability; and if so then whether 1 million is the appropriate threshold, or whether another threshold (*e.g.*, population over 200,000) would be more appropriate.

Within the United States there are 42 urbanized areas that have populations greater than 1 million based on the most recent U.S. Census (2010). These 42 areas are included within or intersect with 35 State and 67 metropolitan planning area boundaries. The FHWA is proposing that for these measures (traffic congestion measure and the peak hour travel time measures for system performance), one single target be established for the roadways within the urbanized area, including those areas that intersect with multiple State and metropolitan planning area boundaries. This single target would need to be agreed upon and shared by all of the entities in the urbanized area. For example, one target would be established for the Philadelphia urbanized area that would be shared by the four States and four MPOs that collectively make transportation investment decisions for the area. The FHWA recognizes that for these large areas, performance is not constrained by political boundaries and that strategies to address performance should be addressed regionally and across political boundaries. For these measures, strategies taken in one political jurisdiction can have direct and indirect impacts when measuring performance in another proximate political jurisdiction. The FHWA felt that this approach would increase the potential for coordination across jurisdictions to manage the overall performance of the region.

Starting With Highways and Expanding to Other Surface Transportation Modes for Assessing Traffic Congestion

The FHWA heard from many stakeholders that the traffic congestion measure should consider the mobility of travelers using all modes of surface transportation such as highways, commuter railways, bikeways, and walkways. The measure proposed in this rulemaking to assess traffic congestion does not fully address this as it is focused only on vehicle delays on NHS highways. The FHWA elected to propose a vehicle delay measure at this time due to the limited availability of reliable, accurate, comprehensive, and timely data for the other surface transportation modes. This type of data would be needed to calculate a more comprehensive delay measure that considers all travelers and all surface modes of transportation. However, FHWA would like to move to a measure in the future that would consider the mobility of travelers using all surface modes of transportation and is seeking comment on feasible approaches that can be taken to move toward the development of such as measure. The CMAQ traffic congestion delay measure proposed in this rulemaking does consider the travel times of vehicles and passengers to the extent they are captured as sources during data collection. In addition, the CMAQ traffic congestion delay measure is expressed as a rate by dividing the total vehicle delay in the area by the total population of the area, which would potentially reflect successful implementation of strategies to provide transportation choices other than highway travel. This proposal is discussed in more detail in the Section-by-Section portion of this preamble for Subpart G.

Improving the Operations of the Existing Transportation Network by Assessing Traffic Congestion

The FHWA heard from many stakeholders that the traffic congestion measure should directly capture the impact of transportation network connectivity issues and land use decisionmaking to improve public accessibility to essential services. The FHWA believes that the delay measure proposed in this rulemaking to assess traffic congestion will reflect these types of strategies to the degree they minimize impacts on highway traffic operations. However, FHWA is not proposing a measure to directly assess transportation connectivity or accessibility. The focus of the proposed measure is to improve the operations of the existing network by reducing congestion, and does not assess if the network or use of land, as designed, is providing for the most efficient connections to adequately move people and goods from their origin to their destination. The FHWA believes that the scope of 23 U.S.C. 150(c) relates to establishing measures for State DOTs and MPOs to use to assess traffic congestion for the purpose of carrying out section 149, which is a component of the Federal-aid highway program. Improving overall network connectivity is a priority for DOT and FHWA. Outside of this rulemaking, FHWA, in cooperation with FTA, is actively working with transportation operating agencies and planning organizations on efforts to understand and advance best practices in assessing and managing transportation network connectivity to improve public accessibility to essential services.

B. Issues Relating to Subpart H

In the development of the requirements in Subpart H, FHWA attempted to use a similar approach as in other subparts. Subpart H is focused on emissions reduced by CMAQ-funded projects in a nonattainment or maintenance area. A summary of the framework used is discussed below.

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[51] A transportation management area (TMA) is defined in Federal statute (23 U.S.C. 134(k)) as an urbanized area having a population of over 200,000, or otherwise designated by the Governor and the MPO and officially designated by the FHWA and FTA Administrators.

Use of Existing/Available Dataset for Assessing On-Road Mobile Source Emissions

This rulemaking proposes to use data included in the existing CMAQ Public Access System to calculate the metric for the on-road mobile source emissions measure. The CMAQ Public Access System is a database of CMAQ project information reported by each State DOT as part of the CMAQ annual reports to FHWA. The Public Access System contains all CMAQ-funded projects by Federal fiscal year and their estimated emissions reductions by pollutant and precursor applicable to the CMAQ program. For purposes of calculating the on-road mobile source emissions measure, use of this existing data set provides a national data source for emissions reductions estimates and will not require a new data collection process.

Dealing With Missing Data When Assessing On-Road Mobile Source Emissions

While quantitative emissions reductions are expected for most projects entered into the CMAQ Public Access System, it is not required nor has it been possible for some pollutants, especially PM emissions. Project sponsors have always had the option to provide a qualitative assessment based on a reasoned and logical evaluation of a project or programs emission benefits. Also, prior to December 20, 2012, EPA's emission model had significant limitations that made it unsatisfactory for use in microscale analyses of $PM_{2.5}$ and PM_{10} emissions. Once MOVES was released on December 20, 2010, areas had a 2 year grace period before the model was required to be used for CAA purposes and many areas also used that grace period to transition to using the model for estimating emissions for CMAQ projects. Therefore, the CMAQ Public Access System includes a mix of both quantitative and qualitative emissions estimates, and in some cases, incomplete emissions estimates for certain pollutants.[52]

In order to reflect the performance of the CMAQ program in reducing on-road mobile source emissions, FHWA is proposing to include only projects with quantitative emissions estimates in the proposed measure. The FHWA understands that State DOTs and/or MPOs may want to amend their project information with quantitative emissions estimates so the emissions reductions can be included in the performance measure. The FHWA is proposing that State DOTs and/or MPOs be allowed to amend their emissions information for projects in the CMAQ Public Access System to include a quantitative emissions estimate where a qualitative analysis may have been used in the past or, in the case of PM emissions, where an appropriate model was not available. State DOTs and/or MPOs would not be required to amend their project information, but we are also soliciting comments on other ways State DOTs and/or MPOs may update or amend their project information with quantitative emissions estimates for use in implementing this performance measure.

Focus on Nonattainment and Maintenance Areas When Assessing On-Road Mobile Source Emissions

The FHWA heard from stakeholders that while all States receive some level of CMAQ funding, the CMAQ on-road mobile source emissions measure should only apply in nonattainment and maintenance areas. The main purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of the NAAQS for O_3, CO, and PM (both PM_{10} and $PM_{2.5}$). Therefore, FHWA determined that the performance measure should also focus on that same purpose. For this reason, the proposed measure in this rulemaking is only applicable to nonattainment and maintenance areas within a State. If a State does not have any nonattainment or maintenance areas, then FHWA is proposing this measure would not apply to them.

Further Improvements to the Public Access System To Ease the Assessment On-Road Mobile Source Emissions

While the CMAQ Public Access System has been available since summer 2011, and FHWA has been keeping a database of CMAQ projects and their estimated emissions since the beginning of the program, there are opportunities to improve the data. In addition to increasing the number of projects with quantitative emissions estimates, the quality of the data and methods used to calculate emissions can also be improved. The FHWA is developing a tool kit, that will be released in modules beginning late spring 2016, of best practices for estimating emissions by project type for project sponsors to improve the assumptions and calculations used in their quantitative estimates. The FHWA developed cost effectiveness tables[53] to be used as a guide by State DOTs and MPOs during the project selection process and when developing performance plans under 23 U.S.C. 149(l). Finally, FHWA also improved the function and usability of the Public Access System in February 2016 to make it easier to develop reports needed for both this rulemaking and the CMAQ performance plan requirements under 23 U.S.C. 149(l).[54]

C. Detailed Discussion of the Proposed Subparts

The elements discussed above were used by FHWA to develop the proposed regulations presented in this rulemaking. The next sections of this NPRM provide detailed discussions on each of the proposed measures and how they could be used by State DOTs and MPOs to establish and report on targets and by FHWA to assess progress made toward the achievement of targets.

1. Subpart A: General Information, Target Establishment, Reporting, and NHPP and NHFP Significant Progress Determination

In this section, FHWA describes the proposed additions to Subpart A, which covers general information, target establishment, reporting, and NHPP and NHFP significant progress determination. This section builds on the proposal introduced in the second NPRM that covered measures to assess pavement and bridge condition on the NHS. For a complete picture, readers are directed to the docket which contains the regulatory text for Subpart A in its entirety. In addition, this section also incorporates the FAST Act changes to the NHPP significant progress determination, and the addition of a requirement for a NHFP significant progress determination. The discussions of the proposed requirements are organized as follows:

- Section 490.101 discusses proposed definitions;
- Section 490.103 describes the proposed data requirements;
- Section 490.105 presents the proposed requirements related to establishing performance targets;
- Section 490.107 discusses reporting on performance targets;
- Section 490.109 describes assessing significant progress toward achieving the performance targets for the NHPP and NHFP; and,
- Section 490.111 discusses the material FHWA would incorporate by reference into the proposed rule.

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[52] FHWA is currently conducting a research effort in an attempt to understand the impact of missing data in the implementation of this measure.

[53] *http://www.fhwa.dot.gov/environment/air_quality/cmaq/reference/cost_effectiveness_tables/costeffectiveness.pdf.*

[54] *https://fhwaapps.fhwa.dot.gov/cmaq_pub/.*

The proposed measures in this NPRM are summarized in Table 9 below. The proposed measures are grouped in 490.105(c) to better reference the proposed measures throughout Subpart A.

TABLE 9—SUMMARY OF PROPOSED MEASURES IN THE 3RD NPRM

Measure groups in § 490.105(c)	Proposed performance measures [23 CFR]	Measure applicability [23 CFR]	Metric data source [23 CFR] & collection frequency	Metric reporting	Metric	Measure calculation
NHS Travel time reliability measures [§ 490.105(c)(4)].	Percent of the Interstate System providing for Reliable Travel Times [§ 490.507(a)(1)].	Mainline of the Interstate System [§ 490.503].	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.511(d)].	Level of Travel Time Reliability (LOTTR) [§ 490.511].	Percentage of the Interstate direction-miles of reporting segments with "LOTTR <1.50" [§ 490.513].
	Percent of the non-Interstate NHS providing for Reliable Travel Times [§ 490.507(a)(2)].	Mainline of the non-Interstate NHS [§ 490.503].	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.511(d)].	Level of Travel Time Reliability (LOTTR) [§ 490.511].	Percentage of the Interstate direction-miles of reporting segments with "LOTTR <1.50" [§ 490.513].
Peak hour travel time measures [§ 490.105(c)(5)].	Percent of the Interstate System where peak hour travel times meet expectations [§ 490.507(b)(1)].	Mainline of the Interstate System in urbanized areas with a population over 1 million [§ 490.503].	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.511(d)].	Peak Hour Travel Time Ratio (PHTTR) [§ 490.511].	Percentage of the non-Interstate NHS direction-miles of reporting segments with " PHTTR <1.50" [§ 490.513].
	Percent of the non-Interstate NHS where peak hour travel times meet expectations [§ 490.507(b)(2)].	Mainline of the non-Interstate NHS in urbanized areas with a population over 1 million [§ 490.503].	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.611(d)].	Peak Hour Travel Time Ratio (PHTTR) [§ 490.511].	Percentage of the non-Interstate NHS direction-miles of reporting segments with " PHTTR <1.50" [§ 490.513].
Freight movement on the Interstate System measures [§ 490.105(c)(6)].	Percent of the Interstate System Mileage providing for Reliable Truck Travel Times [§ 490.607(a)].	Mainline of the Interstate System.	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.611(d)].	Truck Travel Time Reliability [§ 490.611].	Percentage of the Interstate direction-miles of reporting segments with "Truck Travel Time Reliability <1.50".
	Percent of the Interstate System Mileage Uncongested [§ 490.607(b)].	Mainline of the Interstate System.	NPMRDS or Equivalent [§ 490.103]—5-minute cycle.	Annual metric reporting to HPMS [§ 490.611(d)].	Average Truck Speed [§ 490.611].	Percentage of the Interstate direction-miles of reporting segments with "Average Truck Speed 50 mph" [§ 490.613].
Traffic congestion measure [§ 490.105(c)(7)].	Annual Hours of Excessive Delay Per Capita [§ 490.707].	Mainline of NHS in urbanized areas with a population over 1 million in Nonattainment or Maintenance for any of the criteria pollutants under the CMAQ program.	NPMRDS or Equivalent [§ 490.103]—5-minute cycle. Traffic volume and population data in HPMS.	Annual metric reporting to HPMS [§ 490.711(f)].	Total Excessive Delay [§ 490.711].	Annual Hours of Excessive Delay per Capita = (Total Excessive delay)/(total population of UZA) [§ 490.713].
On-road mobile source emissions measure [§ 490.105(c)(8)].	Total Emission Reductions for applicable criteria pollutants [§ 490.807].	All Nonattainment and Maintenance areas for CMAQ criteria pollutants [§ 490.803].	CMAQ Public Access System.	CMAQ Public Access System [§ 490.809].	Annual Project Emission Reductions [§ 490.811].	Cumulative emission reduction due to all projects for each of the criteria pollutant or precursor for which the area is in nonattainment or maintenance ($PM_{2.5}$, PM_{10}, CO, VOC and NO_X). [§ 490.813].

Discussion of Section 490.101 General Definitions

In this section, FHWA proposes to define and describe the proposed use of key terms that will be used throughout this NPRM. The first NPRM and the second NPRM included several definitions (full extent, HPMS, measure, metric, National Bridge Inventory (NBI), non-urbanized area, performance period, and target) that are repeated in this NPRM to clarify the proposed implementation of the performance measures. Please see the docket for the entire listing of proposed definitions and for any additional information.

The FHWA proposes to define "criteria pollutant" in the same way as this term is defined in the general conformity rule at 40 CFR part 93, subpart B (specifically, 40 CFR 93.152). As part of this definition, FHWA proposes to list the transportation-related criteria pollutants from the transportation conformity rule at 40 CFR 93.102(b)(1).

The FHWA proposes to include a definition for "freight bottleneck" for use in Part 490. A freight bottleneck is a segment of the Interstate System not meeting thresholds for freight reliability and congestion, as identified in section 490.613, and any other locations the

State DOT wishes to identify as a bottleneck based on its own freight plans or related documents.

The FHWA proposes to include a definition for "Full Extent" to delineate data collection methods that utilize a sampling approach versus those that use a continuous form of data collection.

The FHWA proposes to include a definition for "Highway Performance Monitoring System (HPMS)" because it will be one of the data sources used in establishing a measure and establishing a target. The HPMS is an FHWA maintained, national level highway information system that includes State DOT-submitted data on the extent, condition, performance, use, and operating characteristics of the Nation's highways. The HPMS database was jointly developed and implemented by FHWA and State DOTs beginning in 1974 and it is a continuous data collection system serving as the primary source of information for the Federal Government about the Nation's highway system. Additionally, the data in the HPMS is used for the analysis of highway system condition, performance, and investment needs that make up the biennial Condition and Performance Reports to Congress. These Reports are used by the Congress in establishing both authorization and appropriation legislation, activities that ultimately determine the scope and size of the Federal-aid highway program. Increasingly, State DOTs, as well as the MPOs, have utilized the HPMS as they have addressed a wide variety of concerns about their highway systems.[55] Numerous State DOTs and some MPOs use HPMS data and its analytical capabilities for supporting their condition/performance assessment, investment requirement analysis, strategic, and State planning efforts, etc.

The FHWA proposes to define "mainline highway" to limit the extent of the highway system to be included in the scope of the proposed pavement performance measures. The proposed definition for mainline highway includes the primary traveled portion of the roadway and excludes ramps, climbing lanes, turn lanes, auxiliary lanes, shoulders, and non-normally traveled pavement surfaces.

The FHWA proposes to include a definition for "measure" because establishing measures is a critical element of an overall performance management approach and it is important to have a common definition that FHWA can use throughout the Part. To have a consistent definition for "measure," FHWA proposes to make a distinction between "measure" and "metric." Hence, FHWA proposes to define "metric" as a quantifiable indicator of performance or condition and to define "measure" as an expression based on a metric that is used to establish targets and to assess progress toward achieving the established targets.

The FHWA proposes to include a definition of the "National Performance Management Research Data Set (NPMRDS)" because use of this FHWA-furnished data set by States and MPOs is proposed for calculating metrics to assess: Performance of the Interstate System and non-Interstate NHS in Subpart E; freight movement on the Interstate System in Subpart F; and traffic congestion for the purpose of carrying out the CMAQ Program in Subpart G. The FHWA's proposed definition of the NPMRDS is a data set derived from vehicle-based probe data that includes average travel times representative of all segments of the NHS for all traffic and for freight traffic. It is important to note that for the purpose of this rulemaking, the freight measures require the use of the freight traffic travel times that are representative of freight trucks for those segments that are on the Interstate System only. The NPMRDS includes freight trucks for all segments of the NHS. Segments are defined by the Traffic Message Channel (TMC) location referencing system used by private sector probe data providers. Segment lengths are typically set as the distance between interchanges, intersections, etc., on roadways, and can be as small as 1/10th of a mile or longer than 10 miles, depending on location. The data set contains records that include average travel times for every 5 minutes of every day (24 hours) of the year, recorded and calculated for every travel time segment where probe data is available. The NPMRDS does not include any imputed travel time data (*i.e.,* data that is not from actual observations such as that derived from historical data for similar days/times). The NPMRDS is used by FHWA to research and develop transportation system performance measures and information related to mobility, including travel time, speed, and reliability. Each travel time segment in the NPMRDS has a maximum of 105,408 5-minute average travel time data points annually.[56] Monthly updates to the NPMRDS are made available to State DOTs and MPOs by the middle of the month following collection (*e.g.,* February 2015 data would be available around March 15, 2015). Each NPMRDS segment is identifiable via a unique geographic location reference called a TMC code. The TMC codes are used by most private sector mapping companies and data providers. Any State DOT or MPO using NPMRDS data has the option to use the TMC coding system to match the NPMRDS segment-level data to the State DOT or MPO's own NHS location referencing system. The FHWA believes use of a national travel time data set by States or MPOs will yield the best data consistency across the States and MPOs and provide for total coverage of the NHS.

The FHWA proposes to include a definition for "non-urbanized areas" to provide clarity in the implementation of the provision in 23 U.S.C. 150(d)(2) that allows the State DOTs the option of selecting different targets for "urbanized and rural areas." As written, the statute is silent regarding the small urban areas that fall between "rural" and "urbanized" areas. Instead of only giving the State DOTs the option of establishing targets for "rural" and "urbanized" areas, FHWA proposes to define "non-urbanized" area include a single geographic area that includes all "rural" areas and small urban areas that are larger than "rural" areas but do not meet the criteria of an "urbanized area" (as defined in 23 U.S.C. 101(a)(34)). This would then allow State DOTs to establish different targets throughout the entire State for urbanized areas and a target for a non-urbanized area. For target establishment purposes, FHWA believes that these small urban areas are best treated with the "rural" areas, as non-urbanized areas, because both of these areas do not have the same complexities that come with having the population and density of urbanized areas and are generally more rural in characteristic. In addition, neither of these areas are treated as MPOs in the transportation planning process or given the authority under MAP–21 to establish their own targets.

The FHWA proposes to include a definition for "Performance period" to establish a definitive period of time during which condition/performance would be measured, evaluated, and reported. The frequency of measurement and target establishment for the measures proposed to implement 23 U.S.C. 150 is not directly or indirectly defined in statute. The FHWA proposes a consistent time period of 4 years that would be used to assess non-safety condition/performance. This time period aligns with the timing of the biennial performance reporting requirements under 23 U.S.C. 150(e) and is consistent with a typical planning cycle for most State DOTs and MPOs (*e.g.*, State and MPO transportation improvement programs are required to cover a 4-year period; metropolitan plans are also required to be updated every 4 or 5 years). The proposed calendar year basis is consistent with data reporting requirements currently in place to report pavement and bridge conditions, which are also done on a calendar year basis. For the measures in section 490.105(c)(1) through (c)(7) in Parts C through G, FHWA proposes a definition for "Performance period" that would cover a 4-year period beginning on January 1 of the calendar year in which State DOT targets are due to FHWA, as discussed in section 490.105. For the on-road mobile source emission measure in section 490.105(c)(8) in Part H, FHWA proposes a definition for "Performance period" that would cover a 4-year period beginning on October 1st of the year prior in which State DOT targets are due to FHWA, as discussed in section 490.105. Please refer to section 490.105(e)(4) for more details. Within a performance period, condition/performance would be measured and evaluated to: (1) Assess condition/performance with respect to baseline condition/performance; and (2) track progress toward the achievement of the target that represents the intended condition/performance level at the midpoint and at the end of that time period. The term "Performance period" applies to all proposed measures in Parts C though H. The proposed measures for the HSIP provided for in section 490.209 in Part B where FHWA proposed a 1 calendar year period as the basis for measurement, target establishment and reporting.

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[55] Highway Performance Monitoring System, FHWA Office of Policy Information. *http://www.fhwa.dot.gov/policyinformation/hpms/nahpms.cfm.*

[56] Estimate based on 12 records per hour, 24 hours per day, and 366 days in the longest year that could occur.

The FHWA proposes to include a definition of "Reporting Segment" because, with FHWA's approval, State DOTs and MPOs may choose to combine individual Travel Time Segments (such as the TMC codes referenced in the prior paragraph) into longer, contiguous reporting segments. The FHWA's proposed definition of "Reporting Segment" is the length of roadway that is comprised of one or more contiguous Travel Time Segments that the State DOT and MPOs coordinate to define for metric calculation and reporting.

The FHWA proposes to include a definition for "target" to indicate how measures will be used for target establishment by State DOTs and MPOs to assess performance or condition.

The FHWA proposes to include a definition of "Transportation Management Area (TMA)" consistent with the definition in 23 CFR 450.104.

The FHWA proposes to include a definition of "Travel Time Data Set" because in the event that either (1) NPMRDS data is unavailable, or (2) a State DOT requests, and FHWA approves the use of an equivalent data set, then the approved equivalent set of travel time data can be used to calculate metrics to assess performance of the Interstate System and non-Interstate NHS, freight movement on the Interstate System, and traffic congestion for the purpose of carrying out the CMAQ Program. The FHWA's proposed definition of "Travel Time Data Set" is either the NPMRDS or an FHWA-approved equivalent data set that is used to carry out the requirements in Subparts E, F, and G of Part 490.

The FHWA proposes to include a definition of "Travel Time Reliability" since this term is used to describe proposed measures for the performance of the Interstate System and non-Interstate NHS and for freight movement on the Interstate System. The FHWA's proposed definition for Travel Time Reliability is consistency or dependability of travel times from day to day or across different times of the day. The definition is based on one that FHWA has used in prior research and studies. The FHWA believes that Travel Time Reliability is important to many transportation system users, including vehicle drivers, public transit riders, and freight shippers. All of these users value Travel Time Reliability, or consistent travel times, more than average travel time because it provides reliability and efficiency when planning for trip times.

The FHWA's proposed definition of "Travel Time Segment" is a set length, which is contiguous, of the NHS for which average travel time data are summarized in the Travel Time Data Set (in the NPMRDS, this would be the TMC codes).

The FHWA proposes to incorporate definitions for "attainment area," "maintenance area," "metropolitan planning organization (MPO)," "National Ambient Air Quality Standards (NAAQS)," "nonattainment area," and "Transportation Management Area (TMA)" as these terms are defined in the Statewide and Nonmetropolitan and Metropolitan Transportation Planning Regulations in 23 CFR 450.104.

Discussion of Section 490.103 Data Requirements

The FHWA is proposing in section 490.103 data requirements that apply to more than one subpart in Part 490. Additional proposed data requirements that are unique to each subpart are included and discussed in their respective subpart.

In this section, FHWA is proposing that State DOTs would submit urbanized area boundaries in accordance with the HPMS Field Manual. The boundaries of urbanized areas would be as identified through the most recent U.S. Decennial Census unless FHWA approves adjustments to the urbanized area, as submitted by State DOTs and allowed for under 23 U.S.C. 101(a)(34). These boundaries would be maintained in the HPMS and used to calculate measures that are applicable to specific urbanized areas or to assess State DOT progress toward the achievement of targets established for urbanized and non-urbanized areas. These boundaries are to be reported to HPMS in the year the State DOT Baseline Performance Report is due (required in section 490.107(b)), and are applicable to the entire performance period (defined in section 490.101 and described in section 490.105(e)(4)), regardless of whether or not FHWA approved adjustments to the urbanized area boundary during the performance period. The FHWA proposes that the State DOT submitted boundary information would be the authoritative data source for the target scope for the additional targets for urbanized and non-urbanized areas (section 490.105(e)(3)), and progress reporting (section 490.107(b)) for the measures identified in section 490.105(c). As discussed in section 490.105(d)(3), any changes in urbanized area boundaries during a performance period would not be accounted for until the following performance period. The FHWA approved urbanized area data available in HPMS on June 15th (HPMS due date) prior to the due date of the Baseline Performance Report is to be used for this purpose. For example, State DOTs shall submit their first Baseline Performance Period Report to FHWA by October 1, 2018. The FHWA approved urbanized area data available in HPMS on June 16, 2018, is to be used.

In section 490.103(c), FHWA is proposing that the boundaries for the nonattainment and maintenance areas be identified for the entire performance period as they are designated and reported by the EPA under the NAAQS for any of the criteria pollutants applicable under the CMAQ program.

The nonattainment and maintenance area would be based on the effective date of EPA designations as published in the **Federal Register** at 40 CFR part 81. States may also want to review EPA's "Green Book" [57] Web site that provides an easy to search tool by pollutant of EPA designations and links to the associated **Federal Register** Notices. The EPA's "Green Book" is updated about twice per year, so States should also check with their local FHWA division office to ensure they have a complete list of all nonattainment and maintenance areas for the performance period. Any changes in the nonattainment or maintenance areas in a State during a performance period would not be accounted for until the following performance period.

In section 490.103(d), FHWA proposes that State DOTs would continue to submit NHS limit data in accordance with HPMS Field Manual. The FHWA proposed that the State DOT submitted NHS information would be the authoritative data source for determining measure applicability (section 490.105(c)), target scope (section 490.105(d)), progress reporting (section 490.107(b)), and determining significant progress (section 490.109(d)) for the measures identified in section 490.105(c)(1) through (c)(7). As discussed in section 490.105(e)(3)(i), the NHS limits dataset referenced in the Baseline Performance Report is to be applied to the entire performance period, regardless of changes to the NHS approved and submitted to HPMS during the performance period.

Depending on when the final rule for this proposal is effective, FHWA plans to determine and publish which State DOTs and MPOs are required to establish targets for each of the proposed measures in Subparts C through H 1 year prior to State DOT's reporting of the targets for the first performance period. The FHWA plans to make the determination based on the following information: Population data from the latest Decennial Census from the U.S. Census Bureau, NHS data from HPMS, and the EPA designated nonattainment and maintenance area published in the **Federal Register** at 40 CFR part 81 [58] at the time of determination. Based on this information, FHWA plans to publish a list on its Web site of State DOTs and MPOs meeting the target establishment requirements for Subparts C–H. Please refer to the discussions for sections 490.105(d), 490.105(e)(1), and 490.107(b)(1).

Beginning with the second performance period and continuing with each performance period thereafter, at the start of each performance period, FHWA will extract the population data from the latest Decennial Census from the U.S. Census Bureau, NHS data from HPMS, and the EPA designated nonattainment and maintenance areas published in the **Federal Register** at 40 CFR part 81, to determine which State DOTs and MPOs are required to establish targets for each of the proposed measures in Subparts C–H, for that performance period. Based on this information, and at the start of each performance period, FHWA plans to publish a list on its Web site of State DOTs and MPOs meeting the target establishment requirements for Subparts C–H.

In section 490.103(e), FHWA is proposing for State DOTs and MPOs to use the NPMRDS data to calculate the metrics defined in sections 490.511, 490.611, and 490.711 to ensure all data used by State DOTs to calculate travel time and speed related metrics are consistent and complete. If more detailed and accurate travel time data exists locally, FHWA is proposing that this data could be used in place of, or in combination with the NPMRDS, provided it is first approved by FHWA.

The NPMRDS is a data set that includes travel times representative of all traffic using the highway system, including a breakdown of travel times of freight vehicles and passenger vehicles. Travel times are recorded on contiguous segments of roadway covering the entire mainline NHS. For the NPMRDS the sources of vehicle probes could include mobile phones, vehicle transponders, and portable navigation devices. Within this data set, the average travel time derived from all vehicle probes traversing each Travel Time Segment is recorded for every 5 minute period throughout every day of the year. This recorded average travel time is referenced as being stored in a "5 minute bin" in this rulemaking. Travel times are only included in the data set if during the 5 minute interval vehicle probes were present to measure travel speeds; consequently, there are no imputed (averaged from similar historical travel periods or estimated) travel times in the data set. The NHS data used in the NPMRDS dataset will be extracted from HPMS on August 15 each year. State DOTs are to provide the necessary NHS information to HPMS in accordance with the HPMS Field Manual. States should make every effort to submit NHS data to HPMS in a timely manner to ensure the NPMRDS dataset is as complete as possible. The NPMRDS is provided monthly and made available to State DOTs and MPOs for their use in managing the performance of the highway system. The FHWA expects to continue to provide for this data at a national level and to make it available to State DOTs and MPOs to ensure the data consistency and coverage needed to assess system performance at a national level.

The FHWA recognizes that some State DOTs and MPOs have developed robust programs to manage system operations, including collection of travel time data that may be more appropriate and effective to use as an alternative source to the NPMRDS. Considering this, FHWA is proposing that State DOTs and MPOs may utilize alternative data sources, referred to hereafter as "equivalent data source(s)," to calculate the travel time metrics proposed in this rulemaking provided the alternative data source is at least "equivalent" in the design and structure of the data as well as extent of coverage both spatially and temporally to the NPMRDS to ensure for consistency in performance assessment at a national level. The FHWA expects that the travel time data set could include a combination of equivalent data source data and NPMRDS data, as long as the combination covers the full NHS. The FHWA is also proposing that State DOTs request and receive approval from FHWA to use equivalent data source(s), to ensure data quality is maintained. The same travel time data for each travel time segment must be used by both State DOTs and MPOs in all measure calculation (in other words, the following must not happen: The State DOT uses NPMRDS and the MPO uses an equivalent data source for the same travel time segment). The FHWA expects that State DOTs and MPOs will work collaboratively to come to agreement on the data sources to use to meet the requirements proposed in this rulemaking.

The FHWA is proposing in section 490.103(e) that the use of equivalent data source(s) be requested by State DOTs and approved by FHWA before the beginning of a performance period. The FHWA anticipates that State DOTs could change their data source during a performance period, recognizing that over this period a State DOT may elect to use an equivalent data source(s) or change back to the NPMRDS based on future data options, quality, and availability. The FHWA is proposing that State DOTs limit requests for the use of equivalent data sources to no more frequently than once per calendar year, and only include requests for data to be collected beginning on January 1 of the calendar year following the request. The request to use equivalent data source(s) would need to be submitted no later than October 1 prior to the beginning of the calendar year in which the data would be used to calculate metrics. The FHWA would need to approve the use of the equivalent data source(s) prior to implementation and use by a State DOT.

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[57] See *http://www.epa.gov/oar/oaqps/greenbk/index.html.*

[58] States may also use EPA's "Green Book" (*http://www.epa.gov/oar/oaqps/greenbk/index.html*) as a reference to check the status of EPA designations and find links to the associated **Federal Register** Notices.

For example, a State DOT can elect to use the NPMRDS for the first performance period (anticipated to begin on January 1, 2018). If the State DOT acquires the resources to collect more accurate and complete data in 2019, the State DOT would need to submit a request for FHWA's approval of the equivalent data source(s), including the travel time segment(s) it is being used on, no later than October 1, 2019, and FHWA would have to approve its use. The State DOT could then use the FHWA approved equivalent data source(s) to calculate the travel time and speed metrics beginning on January 1, 2020.

The FHWA is proposing that for each performance year, the same data sources (*i.e.*, NPMRDS or equivalent data is used for the same travel time segments for all referenced measures) be used to calculate the annual metrics proposed in subparts E, F, and G. The State DOT reporting of metrics to the HPMS proposed in subparts E, F, and G allow the State DOT to reference the reporting segments by either the NPMRDS TMC code or by HPMS location referencing. It is important to note that if a State DOT elects to use an approved equivalent data source they would be required to submit metrics using HPMS location referencing as FHWA would only have the ability to conflate NPMRDS TMC codes to the HPMS roadway network and not TMC codes used in other travel time data sources.

The FHWA is proposing for State DOTs to establish, in coordination with applicable MPOs, and submit reporting segments as discussed in section 490.103 of this rulemaking. State DOTs and MPOs must use the same reporting segment for the purposes of calculating the metrics and measures proposed in subparts E, F, and G.

The State DOT and MPO must use the same reporting segments for all subparts. Several measures would use the information calculated from the reporting segments and convert segment length into mileage to calculate the actual measure, which is described in more detail for each specific measure.

Reporting segments would be distinct sections of roadway that could include one or more contiguous travel time segments. This requirement is being proposed as FHWA anticipates that State DOTs would prefer to join shorter travel time segments into more logical lengths of roadway for reporting purposes. To maintain the granularity needed to capture performance changes, FHWA is proposing that in urbanized areas, reporting segments would not exceed ½ mile in length unless a single travel time segment is longer in length, and in non-urbanized areas, would not exceed 10 miles in length unless a single travel time segment in the travel time data is longer in length. If a single travel time segment in the travel time data is longer than a ½ mile in length in urbanized areas or 10 miles in length in non-urbanized areas, the reporting segment would be the length of that single travel time segment.

In order to ensure that the reporting segments cover the complete NHS within a State, FHWA is proposing that the reporting segments be continuous and cover the full extent of the mainline highways of the NHS. The FHWA considered alternative approaches to defining reporting segments that would represent roadway key corridors to show travel time performance for the Interstate System and non-Interstate NHS. Although FHWA believes that corridor level evaluations are effective in managing system operations, we did not feel that a corridor based approach could be designed and implemented in manner that would provide for the consistency and reliability needed to report on performance at a State and national level. For this reason, FHWA is proposing that the reporting segments represent 100 percent of the mainline highways on the NHS applicable to the measures in subparts E, F, and G.

Although the State DOTs would be the entity required to submit reporting segments, MPOs would need to coordinate with State DOTs on defining these reporting lengths for those roadways that are within the portion of the metropolitan planning area included within the State boundary. In addition, it is recommended that States DOTs coordinate with any local transportation operating agencies that have influence over the management of traffic operations in making the final decision on reporting segment lengths.

In section 490.103(g), FHWA is proposing that the State DOT would submit its reporting segments to FHWA no later than November 1, prior to the beginning of the calendar year in in which they will be used. These reporting segments would be used throughout the performance period. If the State DOT requests and FHWA approves an equivalent travel time data source during the performance period, the State DOT would need to submit a new set of reporting segments that would correspond to the new travel time data source segmentation. These reporting segments are to be submitted to FHWA by November 1 prior to the beginning of the calendar year in which they will be used. For the purposes of carrying out the requirements proposed in Subpart E, FHWA is proposing that the State DOT submit the travel times desired for each reporting segment that is fully included within urbanized areas with populations over 1 million during the peak period travel times (both morning and evening). The FHWA is proposing that State DOTs would submit reporting segments and the desired travel times to HPMS. The FHWA intends to issue additional guidance on how State DOTs could report these data to HPMS. Finally, the State DOT would be required to submit documentation to demonstrate the applicable MPOs' agreement on the travel time data set used, the defined reporting segments, and the desired travel times.

Discussion of Section 490.105 Establishment of Performance Targets

Performance target requirements specific to HSIP-related measures would be established in accordance with section 490.209 of the first performance management NPRM; and performance target requirements specific to pavement condition measures in sections 490.307(a) and bridge condition measures in sections 490.407(c) are included in the second performance management NPRM. The discussions specific to those measures will not be repeated in this NPRM. For additional information, please see the docket for the proposed regulatory text for Part 490, in its entirety that covers both prior NRPMs.

The declared policy under 23 U.S.C. 150(a) transforms the Federal-aid highway program and encourages the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing accountability and transparency in the Federal-aid highway program, and improving investment decisionmaking. To this end, FHWA encourages State DOTs and MPOs to establish targets that would support the national transportation goals while improving investment decisionmaking processes.

A number of considerations were raised during the performance management stakeholder outreach sessions regarding target establishment, such as: Providing flexibility for State DOTs and MPOs, coordinating through the planning process, allowing for appropriate time for target achievement, and allowing State DOTs and MPOs to incorporate risks. Using these considerations, FHWA created a set of principles to develop an approach to implement the target establishment requirements in MAP–21. These principles aimed to develop an approach that:

- Provides for a new focus for the Federal-aid program on the MAP–21 national goals under 23 U.S.C. 150(b);
- improves investment and strategy decisionmaking;
- considers the need for local performance trade-off decisionmaking;
- provides for flexibility in the establishment of targets;
- allows for an aggregated view of anticipated condition/performance; and
- considers budget constraints.

In section 490.105, FHWA proposes the minimum requirements for State DOTs and MPOs to follow in the establishment of targets for all measures identified in section 490.105(c), which include the proposed measures both in this performance management NPRM and the second performance management NPRM. This regulatory text, in its entirety, can be found in the docket. These requirements are being proposed to implement the 23 U.S.C. 150(d) and 23 U.S.C. 134(h)(2) target establishment provisions in a manner that provides for the consistency necessary to evaluate and report progress at a State, MPO, and national level, while also providing a degree of flexibility for State DOTs and MPOs.

The FHWA proposes in section 490.105(a) for State DOTs and MPOs to establish targets for each performance measure identified in section 490.105(c). In section 490.105(b), the performance targets for carrying out the HSIP would be established in accordance with section 490.209 of the first performance management NPRM.

In section 490.105(c), FHWA proposes that State DOTs and MPOs that include, within their respective geographic boundaries, any portion of the applicable transportation network or projects would establish performance targets for the performance measures identified in Subparts C through H. The transportation network or geographic areas applicable to each measure is specified in Subparts C through H under sections 490.303, 490.403, 490.503, 490.603, 490.703, and 490.803, respectively. It is possible that for some measures, the applicable transportation network or geographic area may not be contained within the State or metropolitan planning area geographic boundary. In these cases State DOTs and MPOs would not be required to establish targets. The performance target requirements established by Congress in 23 U.S.C. 135(d)(2)(B)(i)(I) and 23 U.S.C. 134(h)(2)(B)(i)(I) require State DOTs and MPOs to establish targets for the measures described in 23 U.S.C. 150(c), where applicable. Consequently, State DOTs and MPOs are only required to establish targets where their respective geographic boundary contains portions of the transportation network or geographic area that are applicable to the measure. For example, the proposed measure Percent of the Interstate System providing for Reliable Travel Times specified in section 490.507(a)(1) is applicable, as proposed in section 490.503(a)(1), to "mainline highways on the Interstate System." In this example, if Interstate System mainline highways are not contained within the boundary of an MPO's metropolitan planning area the measure would not be applicable to that MPO. As a result, that MPO would not be required to establish a target for the proposed measure Percent of the Interstate System providing for Reliable Travel Times specified in section 490.507(a)(1).

The FHWA proposes in section 490.105(d)(1) that State DOTs establish statewide targets that represent performance outcomes of the transportation network or geographic area within their State boundary, and MPOs establish targets that represent performance outcomes of the transportation network or geographic area within their respective metropolitan planning area for the proposed NHS travel time reliability measures (section 490.507(a)), freight movement on the Interstate System measures (section 490.607), and on-road mobile source emissions measure (section 490.807). State DOTs and, if applicable, MPOs are encouraged to coordinate their target-establishment with neighboring States and MPOs to the extent practicable.

The FHWA proposes in section 490.105(d)(2) that State DOTs and MPOs would establish a single urbanized area target, as described in sections 490.105(e)(8) and 490.105(f)(4), respectively, that would represent the performance of the transportation network in each area applicable to the peak hour travel time measures (section 490.507(b)) and traffic congestion measure (section 490.707) as proposed in sections 490.503(a)(2) and 490.703, respectively. The applicable areas for the peak hour travel time measures are proposed to be urbanized areas with a population greater than 1 million. A subset of these areas would be applicable to the traffic congestion measure: Those areas that also contain any part of an area designated as nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ program. Based on the 2010 U.S. Census,[59] the peak hour travel time measures would be applicable to the transportation network in 42 urbanized areas of which 33 of these areas (based on the effective date of EPA's most recent designations in 40 CFR part 81) would apply to the traffic congestion measure. The FHWA believes that this proposed approach of limiting the applicability of the peak hour travel time and traffic congestion measures is needed to focus performance measurement and reporting on only those areas in the United States where transportation demand can have a considerable impact on performance and where the planning and management of system operations are critical to the achievement of improved outcomes. The FHWA also believes that the State DOTs and MPOs in these larger urbanized areas have the experience and capability needed to meet these performance requirements.

In section 490.105(d), FHWA recognizes that there is a limit to the direct impact the State DOT and the MPO can have on the performance outcomes within the State and the MPO, respectively, and recognizes that the State DOT and the MPO need to consider this uncertainty when establishing targets. For example, some Federal and tribal lands include roads and bridges on the NHS that State DOTs would need to consider (as appropriate) when establishing targets. The FHWA anticipates that State DOTs and MPOs would need to consult with relevant entities (*e.g.*, relevant MPOs, State DOTs, local transportation agencies, Federal Land Management Agencies, tribal governments) as they establish targets to better identify and consider factors outside of their direct control that could impact future condition/performance.

The FHWA also recognizes that the limits of the NHS could change between the time of target establishment and the time of progress evaluation and reporting for the targets for measures specified in sections 490.105(c)(1) through (c)(7). State DOTs may request modifications to the NHS, which could result in additions, deletions, or relocations. Such changes may alter the measures reported, which could then impact how an established target relates to actual measured performance. For example, if NHS limits are changed after a State DOT establishes the target, actual measured performance of the transportation network within the changed NHS limits would represent a different set of highways as compared to what was originally used to establish the target. This difference could impact a State DOT's ability to make significant progress for targets. Thus, for establishing targets for NHS, FHWA believes that it will be important for the State DOT to ensure that the data used to establish the targets is accessible, and the information about the data is properly documented. Consequently, FHWA proposes in section 490.105(d)(3) that State DOTs must declare and describe the extent of the NHS used for target establishment. The FHWA also proposes that State DOTs declare and describe their urbanized area boundaries. This information would be included, along with reporting targets, in the Baseline Performance Period Report described in section 490.107(b)(1). These NHS limits and urbanized area boundaries are to be reported to HPMS in the year the Baseline Performance Report is due, and are applicable to the entire performance period, regardless of whether or not FHWA approved adjustments to the NHS limits during the performance period. Any changes in NHS limits or urbanized area boundaries during a performance period would not be accounted for until the following performance period.

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[59] Urbanized Area Boundary Data: 2010 TIGER/LINE Shapefile published by the U.S. Census Bureau (Accessed on 8/7/2013): *ftp://ftp2.census.gov/geo/tiger/TIGER2010/UA/2010/*.

In section 490.105(e), FHWA proposes the State DOT requirements for the establishment of targets for all measures identified in section 490.105(c), with applicable transportation network for those targets (target scope) defined in section 490.105(d). As defined in section 490.101, a target is a numeric value that represents a quantifiable level of condition/performance in an expression defined by a measure. The FHWA proposes that a target would be a single numeric value representing the intended or anticipated condition/performance level at a specific point in time. For example, the proposed measure, Percent of the Interstate System providing for Reliable Travel Times (in section 490.507(a)(1)), would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times (sections 490.503(a)(1) and 490.513(b)) expressed in one tenth of a percent. Thus, FHWA proposes that a target for this measure would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times expressed in one tenth of a percent. As a hypothetical example, a 2-year target and a 4-year target would be 39.5 percent and 38.5 percent, respectively for the proposed measure Percent of the Interstate System providing for Reliable Travel Times.

Pursuant to 23 U.S.C. 150(d)(1) and (e), FHWA proposes in section 490.105(e)(1) that State DOTs would establish targets within 1 year of the effective date of this rule, and for each performance period thereafter the State DOTs would establish and report the targets to FHWA by the due date provided in section 490.107(b)(1). The FHWA is proposing that this rule would have an individual effective date. Accordingly, FHWA anticipates the final rule for this proposal would be effective no later than October 1, 2017. This would provide for at least a 1-year period for States to establish targets so that they can be reported in the first State Biennial Performance Report which would be due to FHWA by October 1, 2018. The FHWA recognizes that if the final rule is effective after October 1, 2017, the due date to report State DOT targets for the first performance period may need to be adjusted. If it becomes clear that the final rule will not be effective until after October 1, 2017, FHWA will consider adjusting the due date in the final rule or issuing implementation guidance that would provide State DOTs a 1-year period to establish and report targets.

The proposed schedule would require the establishment and reporting of targets at the beginning of each performance period or every 4 years. With the exception of the allowance proposed in section 490.105(e)(6), FHWA is proposing that State DOTs will not have the ability to change targets reported for a performance period. Considering this proposed limitation, State DOTs would need to provide for sufficient time to fully evaluate their targets before they are due to be reported to FHWA.

Pursuant to 23 U.S.C. 135(d)(2)(B)(i)(II), FHWA proposes in section 490.105(e)(2) that State DOTs coordinate with relevant MPOs to establish consistent targets, to the maximum extent practicable. The coordination would be accomplished in accordance with 23 CFR 450. The FHWA recognizes the need for State DOTs and MPOs to have a shared vision on expectations for future condition/performance in order for there to be a jointly owned target establishment process. This coordination is particularly needed for the establishment of the targets for the peak hour travel time and traffic congestion measures since a single target will be established for each applicable[60] urbanized area that would need to be reported identically by each applicable State DOT and MPO. Please refer to sections 490.105(e)(8) and 490.105(f)(4) for discussion on the targets for the peak hour travel time and traffic congestion measures. The FHWA is seeking comment on examples of effective State DOT and MPO coordination. The FHWA is specifically requesting comment on the following questions related to State DOT and MPO coordination in light of the proposed performance management requirements in this rule: What obstacles do States and MPOs foresee to joint coordination in order to comply with the proposed requirements? What mechanisms currently exist or could be created to facilitate coordination? What role should FHWA play in assisting States and MPOs in complying with these proposed new requirements? What mechanisms exist or could be created to share data effectively between States and MPOs? Are there opportunities for States and MPOs to share analytical tools and processes? For those States and MPOs that already utilize some type of performance management framework, what are best practices that they can share?

The FHWA proposes in section 490.105(e)(3) to allow State DOTs to establish additional targets, beyond the required statewide target, for any of the proposed measures for the travel time reliability measures and freight movement on Interstate System measures described in sections 490.507(a) and 490.607, respectively. This is intended to give the State DOT flexibility when setting targets and to aid the State DOT in accounting for differences in urbanized areas and the non-urbanized area. The State DOT could establish additional targets for any number and combination of urbanized areas and could establish a target for the non-urbanized area for any or all of the proposed measures. For instance, a State DOT could choose to establish additional targets for a single urbanized area, a number of the urbanized areas, or all of the urbanized areas separately or collectively. For State DOTs that want to establish a non-urbanized target, it would be a single target that applies to the non-urbanized area statewide. If the State DOT elects to establish any additional targets, they need to be declared and described in the State Biennial Performance Report just after the start date of a performance period (*i.e.*, Baseline Performance Period Report). For each additional target established, State DOTs would evaluate whether they have made progress toward achieving each target and report on that progress in their biennial performance report in accordance with sections 490.107(b)(2)(ii)(B) and 490.107(b)(3)(ii)(B). The FHWA intends to issue guidance regarding the voluntary establishment of additional performance targets for urbanized areas and the non-urbanized area.

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[60] Peak hour travel time measure: Urbanized area with a population greater than 1 million;

Traffic congestion measure: Urbanized area with a population greater than 1 million and also any part of the urbanized area is designated as nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ Program.

As proposed in section 490.105(e)(3)(v), for some measures State DOTs will not be able to establish additional targets. Since peak hour travel time measures and traffic congestion measures are proposed to apply only to certain urbanized areas[61] (please refer to section 490.105(e)(8) for target establishment discussion for these measures), it would not be appropriate to have additional targets. In addition, FHWA anticipates that State DOTs would focus on managing performance for on-road mobile source emissions for those areas designated as nonattainment and maintenance areas,[62] as discussed in section 490.803, regardless of whether those designated areas are located in urbanized area or in non-urbanized area. Thus, rather than the option for establishing additional targets for urbanized areas and the non-urbanized area, FHWA proposes that State DOTs could establish additional targets for any combination of nonattainment and maintenance areas for the on-road mobile source emissions measure. Please refer to section 490.105(e)(9) for target establishment discussion for on-road mobile source emissions measure.

If a State DOT chooses to establish additional performance targets, it would increase the number of performance targets that it reports. For example, at a minimum, State DOTs would be required to establish two statewide targets for NHS travel time reliability measures (separate target for each of the two measures identified in section 490.507(a)). If a State DOT chooses to establish additional targets for the two NHS travel time reliability measures for the single largest urbanized area in its State, the State DOT would increase the total number of NHS travel time reliability targets to four (2 required targets + 2 additional urbanized area targets = 4).

For each additional target established, State DOTs would evaluate whether they have made progress toward achieving each target and report on that progress in their biennial performance report in accordance with sections 490.107(b)(2)(ii)(B) and 490.107(b)(3)(ii)(B).

Any additional targets the State DOT chooses to establish would not be subject to the significant progress assessment in section 490.109. Because these additional targets are optional and subcomponents of targets established under section 490.105(d), including them in the significant progress assessment proposed in section 490.109 could result in "double counting" during that assessment. The FHWA believes that excluding these additional targets from the significant progress assessment in section 490.109 provides an opportunity for some flexibility with respect to establishing the targets and may encourage State DOTs to establish these additional targets.

Historically, the Census has defined urbanized areas every 10 years, and these boundaries can be adjusted (see 23 U.S.C. 101(a)(34)). The FHWA recognizes that the urbanized area boundaries and resulting non-urbanized area boundary have the potential to change on varying schedules. Changing a boundary during a performance period may lead to changes in the measures reported for the area, and could impact how an established target relates to actual measured performance. Thus, FHWA proposes that State DOTs would need to describe the urbanized area boundaries and the non-urbanized area boundary in place at the start of a performance period in the Baseline Performance Period Report, and use those same boundaries throughout a performance period. This will eliminate the potential for inconsistencies in the extent of the network used to establish targets and calculate measures in urbanized areas and the non-urbanized area, and provide consistency in reporting established targets for those areas.

The urbanized area boundaries are to be reported to HPMS in the year the Baseline Performance Report is due, and are applicable to the entire performance period, regardless of whether or not FHWA approved adjustments to an area boundary during the performance period for other reasons. Any changes in area boundaries during a performance period would not be accounted for until the following performance period.

The FHWA is seeking comments on this approach for establishing optional additional targets for urbanized areas and the non-urbanized area. The FHWA would also like comments on any other flexibility it could provide to or identify for State DOTs related to the voluntary establishment of additional targets. Some examples include:

- Providing options for establishing different additional targets throughout the State, particularly for the States' non-urbanized area; and
- Expanding the boundaries that can be used in establishing additional targets (*e.g.*, metropolitan planning area boundaries, city limit boundaries).

As described in section 490.105(f), an MPO would have the option to establish a quantifiable target for their metropolitan planning area. As provided in 23 CFR 450.312, the boundaries of the metropolitan planning area include, at a minimum, the entire existing urbanized area (as defined by the Census Bureau) plus the contiguous area expected to become urbanized within a 20-year forecast period. The FHWA recognizes the challenges in coordinating targets between State DOTs and MPOs, especially in cases where urbanized and metropolitan planning areas cross multiple State boundaries. The FHWA intends for State DOTs and the MPOs to collectively consider boundary differences when establishing both State DOT and MPO targets. For reporting purposes, FHWA expects MPOs to report progress to the relevant State DOT for the entire metropolitan planning area. Multistate MPOs would also be expected to provide the data stratified by State. The FHWA seeks comments on target establishment options and coordination methods that could be used by MPOs and State DOTs in areas where the MPO metropolitan planning area crosses multiple States.

To illustrate the differences in boundaries and how they might be addressed for one of the travel time reliability measures, the following example is provided regarding the target establishment boundary differences that could exist in the State of Maryland today.

- Urbanized Areas: Based on the 2010 Decennial Census, the State of Maryland contains part or all of 11 urbanized areas. Of these urbanized areas, 5 are shared with neighboring States.

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[61] Peak hour travel time measure: Urbanized area with a population greater than 1 million;

Traffic congestion measure: Urbanized area with a population greater than 1 million and also any part of the urbanized area is designated as nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ Program.

[62] Nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ Program.

- Metropolitan Planning Areas: Currently, the State contains part or all of six metropolitan planning areas. Of these areas, four metropolitan planning areas are shared with neighboring States (A map of Metropolitan Planning Areas and Urbanized Areas of the State of Maryland is included in the docket).
- Statewide Urbanized Area Target Extent: An optional State target for the Percentage of Interstate System lane-miles in Good condition within the State's urbanized areas would represent those portions of the 11 urbanized areas within the geographic boundary of the State of Maryland, in aggregate.
- Single Urbanized Area Target Extent: An optional urbanized area target for a single urbanized area would represent the anticipated Percentage of Interstate System lane-mileage in Good condition within the identified urbanized area, based on the corresponding boundary described in the Baseline Performance Period Report. In the case of the Hagerstown urbanized area, the target would be established for the portion of the urbanized area in the State of Maryland.
- MPO Target Extent: Each of the six MPOs would establish individual targets for representing the anticipated percentage of the Interstate System providing for Reliable Travel Times within their entire metropolitan planning area, regardless of State boundary. In the case of the Hagerstown—Eastern Panhandle MPO in Maryland/Pennsylvania/West Virginia, the MPO would establish target for the Interstate System providing for Reliable Travel Times within its metropolitan planning boundary that extends beyond Maryland State boundary and into Pennsylvania and West Virginia State boundaries, while the Maryland DOT would establish its target for the area only within its State boundary.

The FHWA is seeking comment on alternative approaches that could be considered to effectively implement 23 U.S.C. 134(h)(2)(B)(i)(I) and 23 U.S.C. 150(d)(2) considering the need for coordination required under 23 U.S.C. 134(h)(2)(B)(i)(II) and 23 U.S.C. 135(d)(2)(B)(i)(II). The FHWA is also requesting comment on whether the regulations should include more information or specificity about how the MPOs and States should coordinate on target establishment. For some measures proposed in this NPRM, MPOs could establish targets up to 180 days after the State DOT establishes its targets.

The FHWA proposes in section 490.105(e)(4) that State DOTs establish targets with a 2-year time horizon (*i.e.,* 2-year target) and a 4-year time horizon (*i.e.,* 4-year target) for each performance period. For the measures in section 490.105(c)(1) through (c)(7) of this section, each performance period, defined in section 490.101, would begin on the January 1 of the year in which the State DOT target is reported (*i.e.,* State DOT Baseline Performance Period Report required in section 490.107(b)(1)) to FHWA and would extend for a duration of 4 years. Additionally, the midpoint of a performance period would occur 2 calendar years after the beginning of a performance period. For the on-road mobile source emission measure identified in section 490.105(c)(8) of this section, each performance period would begin at the start of the Federal fiscal year, on October 1st of the year prior to which the State DOT target is reported in the State DOT Baseline Performance Period Report to FHWA and would extend for a duration of 4 Federal fiscal years. The midpoint of a performance period for the on-mobile source emission measure would occur 2 Federal fiscal years after the beginning of a performance period. For all measures in section 490.105(c)(1) through (c)(7), 2-year targets would represent the anticipated or intended condition/performance level at the midpoint of each respective performance period, and 4-year targets would represent the anticipated or intended condition/performance level at the end of each respective performance period. For the on-road mobile source emission measure in section 490.105(c)(8), 2-year targets would represent the anticipated cumulative emissions reduction for the first 2 years of a performance period, and 4-year targets would represent the anticipated cumulative emissions reduction for the entire performance period. Please refer to section 490.105(e)(9) for discussion on targets for on-road mobile source emission measure. It is important to emphasize that established targets (2-year and 4-year targets for all measures in paragraph (c) of this section) would need to be considered as interim conditions/performance levels that lead toward the accomplishment of longer-term performance expectations in the State DOT's long-range statewide transportation plan[63] and NHS asset management plans.[64]

The FHWA is proposing this definitive performance period while recognizing that planning cycles and time-horizons for long-term performance expectations differ among State DOTs. The FHWA believes that although differences exist, it was necessary to utilize a 4-year performance period considering the following implementation expectations:

- Provide for a link between the interim, short-term targets (*i.e.,* 2-year and 4-year time horizons) to individual State DOT's long-term performance expectations as part of performance-based planning and programming process;
- Ensure the time horizon is long enough to allow for condition/performance change to occur through the delivery of programmed projects;
- Align the schedule of reporting on targets and the evaluation of progress toward achieving the targets with the biennial performance reporting requirements under 23 U.S.C. 150(e); and
- Report targets using a consistent performance period as part of the evaluation of the State DOT's effectiveness of performance-based planning process to the Congress by October 1, 2017, as required by 23 U.S.C. 135(h).

The FHWA anticipates that the State DOTs would establish targets for the measures listed in section 490.105(c) and report the established targets to FHWA by the statutory deadline for the first biennial report of October 1, 2018.[65] If the final rule is published after September 1, 2016, FHWA will publish guidance to assist State DOTs in complying with Section 150(e) of MAP-21. The FHWA considered a number of alternatives for a consistent time horizon (*i.e.,* performance period) across the State DOTs to ensure consistent reporting of targets and assessment of progress toward achieving those targets for carrying out the requirements in the statutory provisions.[66]

In addition, FHWA considered the data collection and reporting cycles associated with proposed measures. For example, the timeframe of collected data used for calculating a measure for the proposed measures in paragraphs (c)(1) through (c)(7) is on a calendar year basis, but the timeframe of reported data used for calculating a measure for the proposed on-road mobile source emissions measure in paragraph (c)(8) is on a Federal fiscal year basis. The FHWA also assessed the inherent time lag between data collection and target establishment due to necessary data processing, data quality management, data analysis, and other required business processes necessary for target establishment. The FHWA intends to minimize the time lag between the end of a performance period and the time of subsequent biennial performance reporting under 23 U.S.C. 150(e) to ensure a timely assessment of progress toward achieving the targets. Consequently, FHWA proposes two different performance periods—one for the measures in paragraphs (c)(1) through (c)(7) and one for on-road mobile source emissions measure in paragraph (c)(8). The FHWA proposes that that the first 4-year performance period start on January 1, 2018, and end on December 31, 2021, and subsequent performance periods would follow thereafter, for the measures in paragraphs (c)(1) through (c)(7) and first 4-year performance period start on October 1, 2017, and end on September 30, 2021, and subsequent performance periods would follow thereafter, for the measures in paragraph (c)(8). As indicated previously, FHWA plans to align performance periods for the proposed measures in this NPRM (measures in paragraphs (c)(4) through (c)(7) and the measures proposed in the second performance management measure NPRM[67] (measures in paragraphs (c)(1) through (c)(3)). Diagrams for proposed performance periods for target establishment, condition/performance measure data collection and assessment, and biennial performance reporting are exhibited in Figures 1 and 2. Please see section 490.107(a)(4) for discussion on the Initial State Performance Report, which is due on October 1, 2016.

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[63] 23 U.S.C. 135(f).

[64] 23 U.S.C. 119(e).

[65] 23 U.S.C. 150(e).

[66] 23 U.S.C. 150(e), 23 U.S.C. 135(h), and 23 U.S.C. 119(e)(7).

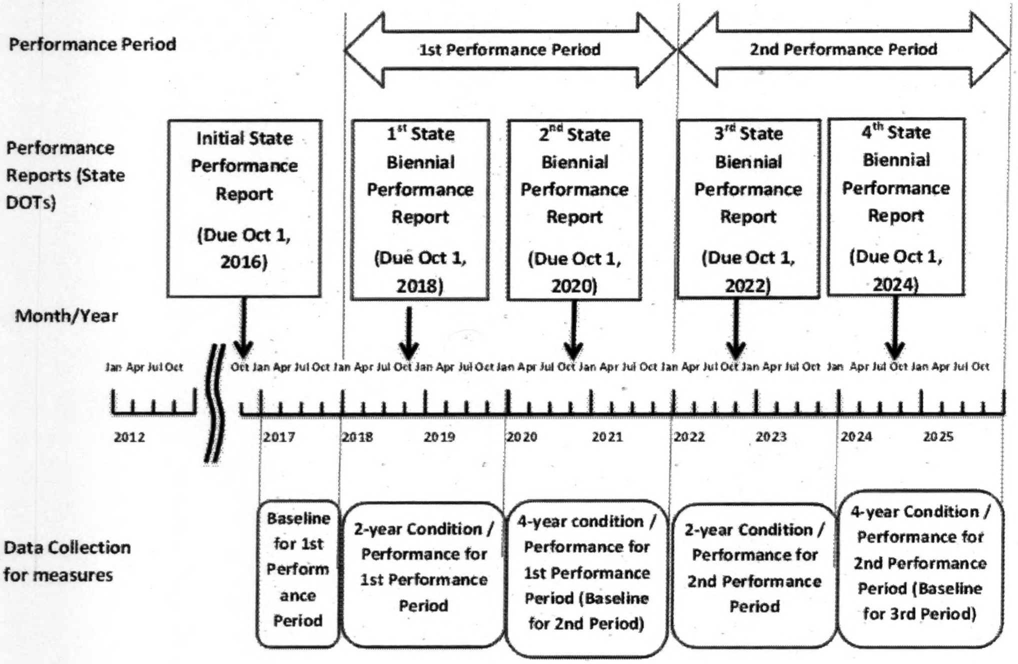
Performance Period
1st Performance Period
2nd Performance Period
Performance Reports (State DOTs)
Initial State Performance Report (Due Oct 1, 2016)
1st State Biennial Performance Report (Due Oct 1, 2018)
2nd State Biennial Performance Report (Due Oct 1, 2020)
3rd State Biennial Performance Report (Due Oct 1, 2022)
4th State Biennial Performance Report (Due Oct 1, 2024)
Month/Year
Jan Apr Jul Oct
Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct Jan Apr Jul Oct
2012
2017
2018
2019
2020
2021
2022
2023
2024
2025
Data Collection for measures
Baseline for 1st Performance Period
2-year Condition / Performance for 1st Performance Period
4-year condition / Performance for 1st Performance Period (Baseline for 2nd Period)
2-year Condition / Performance for 2nd Performance Period
4-year Condition / Performance for 2nd Performance Period (Baseline for 3rd Period)

Figure 1 – Timeline of Performance Periods for All measures Except On-Road Mobile Source Emissions Measure

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[67] Notice of Proposed Rulemaking for the National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program 80 FR 2014–30085 (published January 5, 2015) *http://www.gpo.gov/fdsys/pkg/FR-2015-01-05/pdf/2014-30085.pdf.*

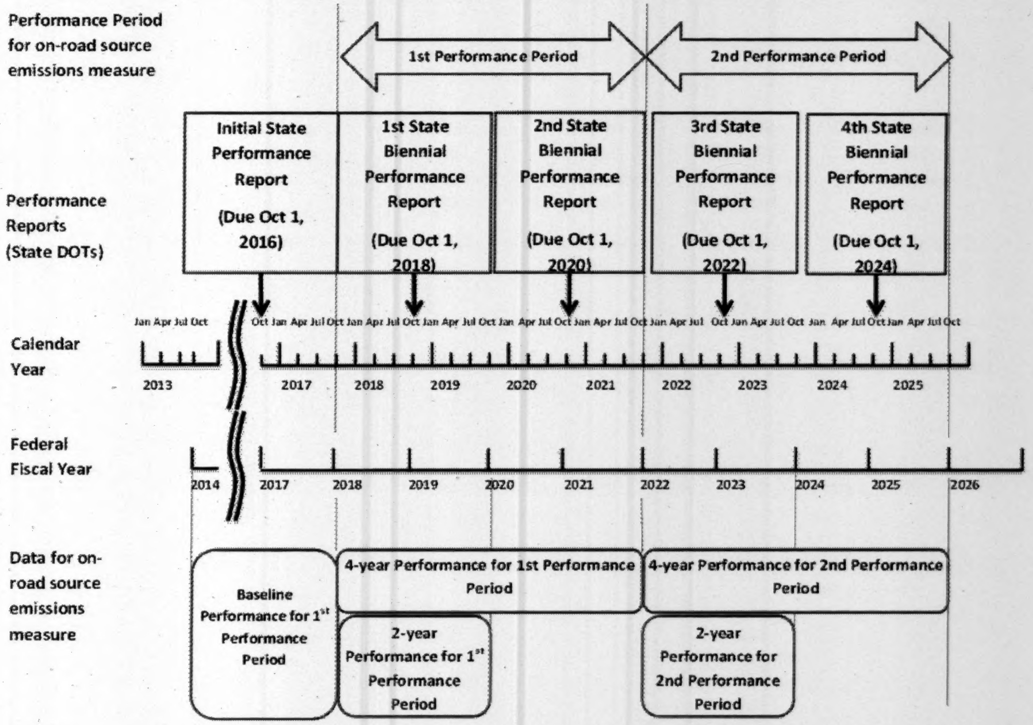
Performance Period for on-road source emissions measure
1st Performance Period
2nd Performance Period
Performance Reports (State DOTs)
Initial State Performance Report (Due Oct 1, 2016)
1st State Biennial Performance Report (Due Oct 1, 2018)
2nd State Biennial Performance Report (Due Oct 1, 2020)
3rd State Biennial Performance Report (Due Oct 1, 2022)
4th State Biennial Performance Report (Due Oct 1, 2024)
Calendar Year
Jan Apr Jul Oct
2013
2017
2018
2019
2020
2021
2022
2023
2024
2025
Federal Fiscal Year
2014
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
Data for on-road source emissions measure
Baseline Performance for 1st Performance Period
4-year Performance for 1st Performance Period
2-year Performance for 1st Performance Period
4-year Performance for 2nd Performance Period
2-year Performance for 2nd Performance Period

Figure 2 – Timeline of Performance Periods for On-Road Mobile Source Emissions Measure

As shown in Figure 1, for the first performance period for all measures except on-road mobile source emissions measure in paragraph (c)(8), the latest measured condition/performance data through December 31, 2017, is the baseline condition/performance. The State DOTs would establish 2-year targets as the condition/performance anticipated at a midpoint, which would be indicated by the latest measured condition/performance data through the midpoint of the performance period (December 31, 2019, for the first performance period). Similarly, the State DOTs would establish 4-year targets as the condition/performance anticipated at the end of a performance period which would be indicated by the latest measured condition/performance data through the end of the performance period (December 31, 2021, for the first performance period). The FHWA recognizes that the previously programmed projects may have an impact on the target a State DOT establishes for the first performance period. State DOTs should consider the impact of previously programmed projects on future performance outcomes when establishing their targets.

As illustrated in Figure 2, the latest 4-year cumulative emissions reductions results from CMAQ projects from fiscal year 2014 through fiscal year 2017, is the baseline condition/performance. For the first performance period for the on-road mobile source emissions measure, State DOTs would establish 2-year targets which would reflect the anticipated cumulative emissions reductions resulting from CMAQ projects to be reported in the CMAQ Public Access System (described in section 490.809) for the Federal fiscal years 2018 and 2019. Thus, the 2-year target would be the anticipated sum of total emission reductions in the CMAQ Public Access System for the Federal fiscal years 2018 and 2019 for each criteria pollutant and applicable precursors for which the area is nonattainment or maintenance. Similarly, the State DOTs would establish 4-year targets as the anticipated cumulative emissions reductions resulting from CMAQ projects to be reported in the CMAQ Public Access System for the Federal fiscal years 2018 through 2021. Thus, the 4-year target would be the anticipated sum of total emission reductions in the CMAQ Public Access System for the Federal fiscal years 2018 through 2021 for each criteria pollutant and applicable precursors for which the area is nonattainment or maintenance. Similar to other measures, FHWA recognizes that the previously programmed CMAQ projects may have an impact on target a State DOT establishes for the first performance period. State DOTs should consider the impact of previously programmed CMAQ projects on future performance outcomes when establishing their targets.

It is important to note that the timeframe of collected data used for calculating a measure depends on the individual measure. Data collection frequency requirements and the timeframe for when State DOTs and MPOs would collect data used for calculating a measure are proposed in the Data Requirement and Calculation of Performance Measure Sections for each measure in the relevant Subparts. This proposed timeline, depicted in Figures 1 and 2, is intended to: (1) Satisfy the first State DOT biennial performance report due on October 1, 2018, as described in the discussion on section 490.107; (2) accommodate data collection cycles and the timeframe for when State DOTs and MPOs would collect data used for calculating a measure; and (3) minimize the time lag between the end/midpoint of a performance period and the following biennial performance reporting date, as described in the discussion sections in 490.107 and 490.109. Baseline condition and target establishment for subsequent performance periods would follow a similar timeline as the first performance period. The proposed 2-year and 4-year targets are timed so that the targets are on the same cycle as the biennial report under 23 U.S.C. 150(e), and are also necessary for FHWA to determine the significant progress for NHPP and NHFP targets as required under 23 U.S.C. 119(e)(7) and 23 U.S.C. 167(j). The FHWA must make this determination every 2 years, after a State DOT submits each biennial report.

The FHWA proposes in section 490.105(e)(5) that State DOTs report their established targets (2-year and 4-year) and progress toward achieving their targets in the biennial performance report required by 23 U.S.C. 150(e) as specified in section 490.107. As discussed in section 490.105(e)(2), State DOT coordination with relevant MPOs is required for selection of targets. Thus, FHWA proposes that the State DOTs would be able to provide relevant MPOs' targets to FHWA, upon request, each time the relevant MPOs establish or adjust MPO targets as described in section 490.105(f).

The FHWA recognizes that State DOTs would need to consider many factors in establishing targets that could impact progress such as uncertainties in funding, changing priorities, and external factors (see section 490.109(e)(5)) outside the control of the State DOTs.

Thus, FHWA proposes in section 490.105(e)(6) that State DOTs may adjust their established 4-year targets when they submit their State Biennial Performance Report just after the midpoint of the performance period (*i.e.*, Mid Performance Period Progress Report, described in section 490.107(b)(2)). This target adjustment allowance would be limited to this specific report and not be allowed at any other time during the performance period. The FHWA feels that this frequency of adjustment allows a State DOT to address changes they could not have foreseen in the initial establishment of 4-year targets while still maintaining a sufficient level of control in the administrative procedure necessary to carry out these program requirements in an equitable manner. For example, the 4-year target established in 2018 (the 1st State Biennial Performance Report illustrated in Figures 1 and 2) may be adjusted in 2020 (2nd State Biennial Performance Report illustrated in Figures 1 and 2). The State DOT would report and justify this adjusted target in the second State Biennial Performance Report due in October 2020 (*i.e.*, Mid Performance Period Progress Report). As discussed in section 490.105(d)(2) of this section, FHWA proposes that State DOTs and MPOs would establish a single urbanized area[68] target, as described in section 490.105(e)(8), that would represent the performance of the transportation network in each area applicable to the peak hour travel time and traffic congestion measures. Thus, FHWA proposes that any adjustments made to 4-year targets established for the peak hour travel time and/or traffic congestion measures would be agreed upon and made collectively by all State DOTs and MPOs that include any portion of the NHS in the respective urbanized area applicable to the measure. The details of reporting requirements for adjusting a target are discussed in section 490.107(b)(2).

In section 490.105(e)(7), FHWA proposes a phase-in for the establishment of targets for the non-Interstate NHS travel time reliability measure, provided in section 490.507(a)(2). This phase-in would require only State DOTs to establish 4-year targets for the first performance period for this measure (reported in the 1st State Biennial Performance Report as illustrated in Figure 1) for non-Interstate NHS travel time reliability measure, provided in section 490.507(a)(2). The FHWA is proposing this phase-in to allow sufficient time for State DOTs and MPOs to become more proficient in managing performance of non-Interstate roadways and for the coverage of the data, during peak periods, to become more complete in the NPMRDS. At the midpoint of the first performance period State DOTs would have the option to adjust the 4-year targets they established at the beginning of the performance period in their State Biennial Performance Report (report due in October 2020 as illustrated in Figure 1). This will allow State DOTs to consider more complete data in their decision on the 4-year targets for non-Interstate NHS travel time reliability. Although 2-year targets would not be established in the first performance period, FHWA is proposing that State DOTs still would report metrics annually, as required in section 490.511(d)), for the non-Interstate NHS travel time reliability measure.

Similarly FHWA is proposing to phase-in the reporting of baseline travel time reliability performance for the non-Interstate NHS travel time reliability measure. The FHWA proposes that State DOTs would report baseline performance in the 2nd State Biennial Performance Report in 2020 (instead of the 1st report due in 2018) for non-Interstate NHS travel time reliability. This baseline would represent the performance through the end of 2019 (*i.e.*, 2-year condition/performance). Also, as State DOTs would not be establishing 2-year targets for non-Interstate NHS travel time reliability, FHWA will not evaluate performance progress at the midpoint of the first performance period (discussed further in section 490.109(e)(3)) for this measure.

In section 490.105(e)(8), as discussed in sections 490.507(b) and 490.707, FHWA proposes that the peak hour travel time measure would apply to the roadway transportation network in urbanized areas with a population over 1 million and the traffic congestion measure would include these same areas that also contain areas designated as nonattainment or maintenance areas for any of the criteria pollutants applicable under the CMAQ program. The FHWA proposes that State DOTs, with mainline highways on the Interstate System that cross any part of an urbanized area with a population more than 1 million within its geographic State boundary, would establish a target for peak-hour travel time for the Interstate System for that urbanized area. Similarly, FHWA proposes that State DOTs, with mainline highways on the non-Interstate NHS that cross any part of an urbanized area with a population more than 1 million within its geographic State boundary, would establish a target for peak-hour travel time for the non-Interstate NHS for that urbanized area. The FHWA proposes that if a State DOT is required to establish targets for either of the peak hour travel time measures for an urbanized area and that urbanized area contains any part of a nonattainment or maintenance area for any one of the criteria pollutants, as specified in section 490.703, then that State DOT would also be required establish targets for the traffic congestion measure. For instance, if a State is in attainment for the applicable criteria pollutants, but that State is part of a multistate urbanized area with more than 1 million in population and another part of that urbanized area contains an applicable nonattainment or maintenance area then the State that is in attainment would be required to work with the other States and establish a traffic congestion target.

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[68] Peak hour travel time measure: Urbanized area with a population greater than 1 million; Traffic congestion measure: Urbanized area with a population greater than 1 million and also any part of the urbanized area is designated as nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ Program.

In deciding to limit the applicability of these performance measures, FHWA considered a number of factors. In general, the boundary limits of large urbanized areas are representative of population size and density. The FHWA believes that the need to plan for and manage transportation demand is greatest in areas of the country where populations are high and more densely located. The FHWA also believes that in these largest urbanized areas State DOTs and MPOs have the experience and capability needed to plan and manage high levels of transportation demand. For these reasons, FHWA is proposing, as discussed in Subparts E and G, an approach to limit the applicability of the peak hour travel time and traffic congestion measures to only those roadway networks that are contained in very large urbanized areas. The FHWA believes that the MAP–21 statewide and metropolitan target establishment provisions[69] only require State DOTs and MPOs to establish targets where the measure is applicable to them. Because some State DOTs and MPOs do not include these very large urbanized areas, it is highly likely that those State DOTs and MPOs would not be required to establish targets for the peak hour travel time and traffic congestion measures. Based on the 2010 Decennial U.S. Census[70] and a recent EPA designation[71] of nonattainment and maintenance areas, there are 42 urbanized areas in the country where the population is greater than 1 million and of these 33 are designated as nonattainment or maintenance areas. Using these boundaries, 35 State DOTs and 67 MPOs[72] would be required to establish targets for peak hour travel time measures and 33 State DOTs and 42 MPOs would be required to establish a target for the traffic congestion measure. Based on the data available, FHWA has estimated the State DOTs and MPOs who might be affected by proposed peak hour travel time and traffic congestion measures. A list[73] of those State DOTs and MPOs is included in the docket.

The FHWA is proposing that the applicable areas would be determined at the beginning of a performance period and remain for the duration of the performance period regardless of changes that could result from U.S. Census or EPA designation changes during the performance period.

As population continues to grow there will be an increased potential for large urbanized areas to extend across State borders and/or metropolitan planning area boundaries necessitating an increased level of coordination of multiple entities to plan for and manage transportation demand. The FHWA believes that State DOTs and MPOs should collectively work together to support a common transportation performance vision for the area. The FHWA also believes that, through congestion management planning being done by MPOs serving a TMA as part of the planning process,[74] an increased level of coordination is occurring today, especially in the largest urbanized areas across the country. For this reason, FHWA is proposing in section 490.105(e)(8) that a single, unified target for each of the peak hour travel time measures and a single, unified target for the traffic congestion measure be established for each applicable urbanized area in the country. For each of these urbanized areas, the peak hour travel time and traffic congestion targets would be collectively established by all State DOTs and MPOs that have, within their respective boundaries, any portion of the applicable roadway network in the applicable urbanized area. Consequently, the 2-year and 4-year targets established for peak hour travel time and traffic congestion measures would be reported identically by each State DOT and MPO in the applicable area. Also, under the proposed approach, any adjustments to the 4-year target would be made for the entire applicable urbanized area; resulting in identical reporting of the adjustment by each State DOT and MPO in the applicable areas. For example, based on the most recent U.S. Census, four State DOTs and four MPOs have non-Interstate NHS mileage within their respective boundaries that are contained within or cross into the Philadelphia Urbanized Area. Although the share of the non-Interstate NHS network varies considerably among the eight entities, each would be required to report the same target that would be developed through a coordinated approach, for the Philadelphia Urbanized Area. In this area any adjustments to the target would also need to be made and agreed upon by all eight entities. The FHWA considered separate State DOT and MPO targets for their share of the transportation network within an urbanized area for the targets for the peak hour travel time and traffic congestion measures. However, FHWA believes that performances related to peak hour travel time and traffic congestion within each entity's geographic boundary within an urbanized area would heavily impact the performances of the surrounding entities in that urbanized area. To encourage an increased level of coordination for effectively managing transportation demand of an urbanized area for these measures, FHWA is proposing a single target for each applicable urbanized area.

State DOTs and MPOs would also be required to establish targets for peak hour travel time and traffic congestion measures for more than one urbanized area if their respective boundaries intersect or include multiple applicable urbanized areas. For example, based on the most recent U.S. Census, Maryland DOT would be required to establish targets for three applicable urbanized areas: Baltimore, Washington, DC, and Philadelphia. As discussed above, the targets established for these three areas would be shared by the other applicable State DOTs and MPOs.

In section 490.105(e)(8)(vi), FHWA proposes a phase-in for the establishment of targets for the traffic congestion measure in section 490.707. As discussed previously for the non-Interstate NHS travel time reliability targets, this phase-in is being proposed to provide sufficient time for State DOTs and MPOs to become more proficient in managing traffic congestion performance and for the travel time data coverage to be more complete in the NPMRDS. The proposed traffic congestion measure requires complete data coverage to capture all excessive delay occurrences throughout the day at a 5-minute level of granularity. In addition, as indicated in section

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[69] Target establishment provisions: Statewide 23 U.S.C.135(d)(2)(B)(i)(I); Metropolitan 23 U.S.C. 134(h)(2)(B)(i)(I).

[70] Urbanized Area Boundary Data: 2010 TIGER/LINE Shapefile published by the U.S. Census Bureau (Accessed on 8/7/2013): *ftp://ftp2.census.gov/geo/tiger/TIGER2010/UA/2010/* Population Data for Urbanized Areas (Accessed on 8/7/2013): *https://www.census.gov/geo/reference/ua/urban-rural-2010.html.*

[71] The status of the nonattainment/maintenance areas was verified on 5/1/2015 based on EPA's Green Book (updated on April 14, 2015): *http://www.epa.gov/oaqps001/greenbk/gis_download.html.*

[72] Metropolitan Planning Area Data: FHWA HEPGIS (Accessed on 10/15/2015): *http://hepgis.fhwa.dot.gov/hepgismaps11/ViewMap.aspx?map=MPO+Boundaries|MPO+Boundary#.*

[73] Documents "Peak Hour Travel Time Measure States and MPOs.pdf" and "CMAQ Measure States and MPOs.pdf" in the docket.

[74] See 23 U.S.C. 134(k)(3).

490.711, the metric for the proposed traffic congestion measure requires the integration of travel time and traffic volume datasets. For these reasons, FHWA believes more time is needed before State DOTs and MPOs can reliably establish meaningful targets for traffic congestion.

The FHWA is aware that the NPMRDS will be lacking data on the non-Interstate NHS roadways in the short-term (missing data is discussed in a white paper provided on the docket). If 2-year targets were to be established in the first performance period, the NPMRDS will be lacking data on the non-Interstate NHS roadways. The FHWA anticipates that enough data would be missing to make it difficult for States to establish reasonable targets. By the time the 2-year condition/performance are calculated, FHWA expects the NPMRDS data to have improved to an acceptable level for this measure. Also, States would have time to understand the impact of missing data on target establishment. Full compliance is required starting from the second performance period. Thus, FHWA proposes that for the first performance period, as with the non-Interstate travel time reliability measure, State DOTs would only be required to establish their 4-year targets for the traffic congestion measure in the beginning of the first performance period (*i.e.,* the 1st State Biennial Performance Report in 2018 illustrated in Figure 1) for the traffic congestion measure. If necessary, State DOTs would adjust their established 4-year targets at the midpoint of the first performance period (*i.e.,* the 2nd State Biennial Performance Report in 2020 illustrated in Figure 1) as described in section 490.105(e)(6). Although 2-year targets would not be established in the first performance period, FHWA is proposing that State DOTs still would report metrics annually, as required in section 490.711(f).

For the first performance period only, the baseline traffic congestion performance would be reported by the State DOT at the midpoint of the performance period in their 2nd State Biennial Performance Report in 2020 (illustrated in Figure 1). This baseline report would represent traffic congestion performance through 2019 (*i.e.,* 2-year condition/performance).

The FHWA proposes in section 490.105(e)(9) the State DOT target establishment requirements for the proposed on-road mobile source emission measure, identified in section 490.807. In paragraph (i) of this section, FHWA proposes that State DOTs would establish a statewide target for all areas within the State geographic boundaries designated as nonattainment or maintenance for the O_3, CO, or PM (PM_{10} and $PM_{2.5}$) NAAQS.

In section 490.105(e)(9)(ii), FHWA proposes that State DOTs would establish separate statewide targets for each of the applicable criteria pollutant and precursor ($PM_{2.5}$, PM_{10}, CO, VOC and NO_X) for which the State is designated as nonattainment or maintenance, as described in section 490.807.

As proposed in section 490.105(e)(4)(iii) and (e)(4)(iv), the 2-year targets for this measure would reflect the anticipated cumulative emissions reduction to be reported for the first 2 years of a performance period by (*i.e.,* total emissions reduced for 2 fiscal years) pollutant and precursor. The 4-year target would reflect anticipated cumulative emissions reduction to be reported for the entire performance period (*i.e.,* total emissions reduced for 4 fiscal years) by pollutant and precursor.

To implement the flexibility in 23 U.S.C. 150(d)(2) that provides State DOTs the option for establishing different targets for different areas of the State and in consideration of the measure that FHWA is proposing for on-road mobile source emissions, FHWA proposes in section 490.105(e)(9)(iv) that State DOTs would have the option of establishing additional targets, beyond the statewide targets, for any number and combination of nonattainment and maintenance areas by applicable criteria pollutant and precursors. For instance, a State DOT could choose to establish additional targets for a single nonattainment and maintenance area and a single applicable criteria pollutant or precursor, a number of areas and applicable pollutants or precursors, or each of the areas and applicable pollutants or precursors separately. A State DOT that has multiple nonattainment and maintenance areas for multiple criteria pollutants could decide to establish a target for one of the areas and for only one of the applicable pollutants or precursors within that area. If a State DOT decides to establish these additional targets, the requirements for these targets are similar to those provided in section 490.105(e)(3). The additional targets would need to be described in the State Baseline Performance Period Report. For each additional target, State DOTs would evaluate whether they have made progress toward achieving the target and report on that progress in their biennial performance report in accordance with sections 490.107(b)(2)(ii)(B) and 490.107(b)(3)(ii)(B).

In sections 490.105(e)(9)(v) and (e)(9)(vi), FHWA proposes that the State DOT's requirement for establishing target(s) for on-road mobile source emission measure would be by the EPA's nonattainment and maintenance areas designations published in the **Federal Register** in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA. States may also use EPA's "Green Book" Web site[75] to check the status of EPA designations. States should also check with their local FHWA division office to ensure they have a complete list of all nonattainment and maintenance areas for the performance period. These designations would be used for the duration of the performance period regardless of subsequent change in designation status during that performance period. In section 490.105(e)(9)(vii), FHWA proposes that if a State geographic boundary does not contain any part of areas designated by the EPA as nonattainment or maintenance for any of the criteria pollutants applicable to the CMAQ Program at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that State DOT is not require to establish targets for on-road mobile source emissions measures for that performance period.

Although both traffic congestion and on-road mobile source emission measures are proposed to carry out the CMAQ Program, there are some differences in how the targets for the measures would be implemented. As discussed in section 490.105(e)(8), the targets for the traffic congestion measure would apply to the NHS roadway network in urbanized areas with a population over 1 million that also contain areas designated as nonattainment or maintenance for any of the criteria pollutants applicable under the CMAQ Program where as the targets for on-road mobile source emission measure would apply to all nonattainment or maintenance areas for any of the criteria pollutants applicable under the CMAQ Program as discussed in section 490.105(e)(9). The FHWA also proposes that a single, unified target for traffic congestion measure would be established for each applicable urbanized area in the country; whereas target(s) for the on-road mobile source emission measure would be bounded by State geographic boundaries and nonattainment or maintenance areas.

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[75] See *http://www.epa.gov/oar/oaqps/greenbk/index.html.*

Additionally, as discussed in section 490.105(e)(4), the performance period for the traffic congestion measure would be on a calendar year basis whereas the performance period for the on-road mobile source emission measure would be on a Federal fiscal year basis. Even though there are differences between these measures, FHWA believes both of these measures support two goals of the CMAQ Program: To improve air quality and relieve congestion. Both of these measures also are consistent with the National Goals of environmental sustainability and congestion reduction (23 U.S.C. 150(a)(3) and (a)(6)). In section 490.105(f), FHWA proposes MPO requirements for the establishment of targets for all measures identified in section 490.105(c). These requirements are being proposed to implement the 23 U.S.C. 134(h)(2)(B) target establishment provisions in a manner that provides for a level of consistency necessary to evaluate and report progress at an MPO and national level while providing for a degree of flexibility to support metropolitan planning needs. The FHWA also attempted to develop these target establishment requirements so that they could be met by all MPOs, recognizing that MPOs currently vary in capability, resource availability, and ability to establish performance targets. Given these considerations, FHWA is proposing that MPOs would be required, depending on the measure, to establish both 2-year and 4-year targets or only 4-year targets.

As part of the MPO-State DOT coordination in establishing State DOT and MPO targets described in the discussion of sections 490.105(e)(2) and 490.105(f)(2), FHWA proposes in section 490.105(f)(1) that MPOs establish targets with a 4-year performance period identical to the State DOT's performance periods discussed in the Section-by-Section Discussion for 490.101 and 490.105(e)(4). It is important to emphasize that established MPO targets must be considered as interim conditions/performance levels that lead toward the accomplishment of longer-term performance expectations in the MPO's Metropolitan Transportation Plan[76] and relevant State DOT NHS asset management plans.[77]

The FHWA proposes in section 490.105(f)(1)(i) that each MPO would establish 4-year targets for all applicable measures in section 490.105(c) no later than 180 days after the relevant State DOT establishes its targets, described in the discussion of section 490.105(e)(1).[78]

The FHWA proposes in section 490.105(f)(1)(ii) that the MPOs with any portion of the applicable roadway network in an urbanized area with a population greater than 1 million would establish both 2-year and 4-year targets for the peak hour travel time measures, as described in section 490.105(f)(4)(i). In addition, the MPOs that have any portion of the applicable roadway network in an urbanized area with a population greater than 1 million and contain areas designated as nonattainment or maintenance would establish both 2-year and 4-year targets for the traffic congestion measure, as described in section 490.105(f)(4)(ii). The FHWA is proposing this approach because, as discussed section 490.105(e)(8), 2-year and 4-year targets established for peak hour travel time and traffic congestion measures would represent the entire urbanized area, and State DOTs and MPOs would report identical targets for each of the applicable urbanized areas. In addition, for the traffic congestion measure, the requirement to have targets every 2 years is consistent with the requirement for these MPOs to report on this target every 2 years under the performance plan requirements of 23 U.S.C. 149(l).

For the on-road mobile source emissions measure, whether an MPO must establish 2-year and 4-year targets or would only be required to establish a 4-year target depends on if the MPO is in an urbanized area with a population greater than 1 million and contains areas designated as nonattainment or maintenance for any of the criteria pollutants applicable to the CMAQ program. An MPO in one of these large urbanized areas would be required to establish both 2-year and 4-year targets for the on-road mobile source emissions measure, as provided in section 490.105(f)(5)(iii). An MPO outside of these large urbanized areas would only be required to establish a 4-year target for the on-road mobile source emissions measure, as required by section 490.105(f)(1)(i); it would not be required to establish a 2-year target as provided in section 490.105(f)(1)(ii). In proposing this approach, FHWA considered that the MPOs in a larger urbanized area would be required to do biennial reporting on these targets under 23 U.S.C. 149(l).

The FHWA recognizes the burden on MPOs, regardless of size, to establish targets. In addition, MPOs are not directly subject to the requirement to evaluate the progress toward achieving NHPP and NHFP targets under 23 U.S.C. 119(e)(7) and 23 U.S.C. 167(j). As a result, FHWA proposes in section 490.105(f)(1)(iii) that MPOs would not be required to establish 2-year targets for the NHS travel time reliability measures and freight movement on Interstate System measures.

In the case of the first performance period, FHWA anticipates that the State DOTs would establish targets for the measures listed in section 490.105(c) prior to the first State DOT biennial performance report, and the MPOs would establish targets no later than 180 days thereafter. The timeline for target establishment for State DOTs is illustrated in Figures 1 and 2 in the discussion of section 490.105(e)(4). The FHWA recognizes that the previously programmed projects may have an impact on the target an MPO establishes for the first performance period. The MPOs should consider the impact of previously programmed projects on future performance outcomes when establishing their targets. As discussed in section 490.105(e)(4), FHWA recognizes that if the final rule is effective after September 30, 2017, the due date to report State DOT targets for the first performance period may need to be adjusted. If the rule is effective on or after September 30, 2017, MPOs may not have the opportunity to establish their own targets in time for State DOTs to consider those MPO targets when submitting the 1st Baseline Performance Period Report. If it becomes clear that the final rule will not be effective until after September 30, 2017, FHWA will consider adjusting the due date in the final rule or issuing implementation guidance that would provide State DOTs a 1-year period and MPOs 180 days thereafter to establish and report targets. The MPOs would be required to establish targets for all applicable measures.

Similar to the requirement for State DOTs, pursuant to 23 U.S.C. 134(h)(2)(B)(i)(II), FHWA proposes in section 490.105(f)(2) that MPOs coordinate with relevant State DOT(s) to establish consistent targets, to the maximum extent practicable. This would be done in accordance with 23 CFR 450.

The FHWA recognizes the burden on the MPOs to establish their own performance targets. Consequently, as proposed, the MPOs would have the flexibility to establish their targets using one of the two options. The FHWA proposes in section 490.105(f)(3) that, for most of the measures, MPOs would establish targets, specific to the metropolitan planning area, by either: (1) Agreeing to plan and program projects so that they contribute toward the accomplishment of the relevant State DOT target, or (2) committing to a quantifiable target for their metropolitan planning area. This proposal would give MPOs two options to establish targets. The MPOs could establish their own quantifiable targets. Alternatively, recognizing that the resource level and capability of some MPOs to reliably predict performance outcomes varies across the country, FHWA is proposing an approach that would allow MPOs that do not want to establish their own quantifiable target to establish targets by supporting the State DOT targets for performance. The MPOs would do this through their investment decisionmaking process. Regardless of which option MPOs use to establish targets, FHWA recognizes that the MPOs may need to work with relevant State DOTs to coordinate, plan, and program projects for their planning area.

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[76] 23 U.S.C. 134(i).

[77] 23 U.S.C. 119(e).

[78] 23 U.S.C.134(h)(2)(C) requires that an MPO establish targets 180 days after the relevant State DOT establishes its target, but does not require that the MPO establish the same number of targets as the State. For certain measures, even where a State DOT is establishing a 2-year and a 4-year target at the start of a performance period, FHWA is proposing that MPOs would only need to establish a 4-year target.

However, these MPO target establishment options would not be available for MPOs subject to the peak hour travel time or the traffic congestion measures because FHWA has proposed that MPOs and the State DOTs subject to these measures establish identical targets. Also those MPO target establishment options would not be available for certain MPOs[79] for the on-road mobile source emissions measure as those MPOs are required to commit to their targets for the entire subject area under 23 U.S.C. 149(l).

As discussed previously, FHWA is proposing that MPOs establish targets for the peak hour travel time and traffic congestion measures for applicable urbanized areas. The FHWA proposes that MPOs, with mainline highways on the Interstate System that cross any part of an urbanized area with a population more than 1 million within its metropolitan planning area boundary, would establish a target for peak-hour travel time for the Interstate System for that urbanized area. Similarly, FHWA proposes that MPOs, with mainline highways on the non-Interstate NHS that cross any part of an urbanized area with a population more than 1 million within its metropolitan planning area boundary, would establish a target for peak-hour travel time for the non-Interstate NHS for that urbanized area.

The FHWA proposes an MPO would establish targets for the traffic congestion measure when mainline highways on the NHS within that MPO's metropolitan planning area boundary cross any part of an urbanized area with a population more than 1 million, and that portion of the metropolitan planning area boundary intersecting the urbanized area also includes a nonattainment or maintenance area for any one of the criteria pollutants, as specified in section 490.703. If an MPO's metropolitan planning area boundary overlaps with an urbanized area where a traffic congestion target is required but that MPO is not required to establish the traffic congestion target, then the MPO should coordinate with relevant State DOT(s) and MPO(s) in the target selection process for the traffic congestion measure. The FHWA is proposing in section 490.105(f)(4) that MPOs would be subject to the same requirements as State DOTs for the establishment of a single peak hour travel time target and a single traffic congestion target. This would require MPOs to establish both 2-year and 4-year targets that would be identical to the targets reported by other State DOTs and MPOs that share in roadway network for the applicable urbanized area. The proposed language is similar to the proposal for State DOT targets for these measures in section 490.105(e)(8). It is possible that an MPO could be required to establish more than 1 peak hour travel time or traffic congestion target if the boundary of the respective metropolitan planning area includes applicable roadways that are in multiple, separate applicable urbanized areas. Based on the data available[80] at this time, FHWA has prepared a list[81] of the State DOTs and MPOs which might be affected by proposed peak hour travel time and traffic congestion measures and included this list in the docket.

In section 490.105(f)(4)(iv), FHWA proposes the same requirements be applied to MPOs for the traffic congestion target as required for State DOTs in sections 490.105(e)(8)(vi)(A) and (e)(8)(vi)(B), which would require only 4-year targets to be established for the first performance period. This will provide additional time needed for MPOs to become more proficient in the management of traffic congestion and for travel time data coverage to be more complete within the NPMRDS. Please see discussion for section 490.105(e)(8)(vi) for more details.

The FHWA proposes in section 490.105(f)(5) MPO target establishment requirements for the proposed on-road mobile source emission measure, identified in section 490.807. The proposed language is similar to the proposal for State DOT targets for these measures in 490.105(e)(9). In section 490.105(f)(5)(i), FHWA proposes that MPOs would establish targets for each applicable criteria pollutant (and precursor ($PM_{2.5}$, PM_{10}, CO, VOC and NO_X) for which the area is designated as nonattainment or maintenance under the NAAQS.

As discussed in section 490.105(e)(9), the MPOs would adhere to the Federal fiscal year based performance periods for the on-road mobile source emissions targets. In paragraph (ii) of this section, FHWA proposes that the MPOs would establish targets as discussed in section 490.105(e)(9)(iii).

In section 490.105(f)(5)(iii), FHWA proposes that if any part of the nonattainment or maintenance area within a metropolitan planning area for any one of the applicable criteria pollutants is located within the boundary of an urbanized area with a population more than 1 million in population, then that MPO would establish both 2-year and 4-year targets for its metropolitan planning area.

In section 490.105(f)(5)(iv), FHWA proposes that a nonattainment or maintenance area within a metropolitan planning area for any one of the applicable criteria pollutants is not located within the boundary of an urbanized area with a population more than 1 million in population, then that MPO would not be required to establish a 2-year target and would only establish both 4-year targets for its metropolitan planning area as required in section 490.105(f)(3).

In section 490.105(f)(5)(v) and (f)(5)(vi), FHWA proposes the same requirements be applied to MPOs for the on-road mobile source emission target as required for State DOTs in sections 490.105(e)(9)(v) and (e)(9)(vi). In section 490.105(f)(5)(vii), FHWA proposes language for the MPOs that is similar to the State DOT provision in section 490.105(e)(9)(vii).

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[79] MPOs in an urbanized area with a population greater than 1 million that contain areas designated as nonattainment or maintenance for any of the criteria pollutants applicable to the CMAQ program.

[80] Metropolitan Planning Area Data: FHWA HEPGIS (Accessed on 5/1/2015): *http://hepgis.fhwa.dot.gov/hepgismaps11/ViewMap.aspx?map=MPO+Boundaries√MPO+Boundary#*. The nonattainment/maintenance status of the MPOs areas was verified on 5/1/2015 based on EPA's Green Book (updated on April 14, 2015): *http://www.epa.gov/oaqps001/greenbk/gis_download.html*. Population Data for Urbanized Areas (Accessed on 8/7/2013): *https://www.census.gov/geo/reference/ua/urban-rural-2010.html*.

[81] Documents "Peak Hour Travel Time Measure States and MPOs.pdf" and "CMAQ Measure States and MPOs.pdf" in the docket.

As discussed in section 490.105(e)(9), both traffic congestion and on-road mobile source emission measures are proposed to carry out the CMAQ Program, but there are some differences in how the targets for the measures are to be implemented. Please refer to the discussion for section 490.105(e)(9) for a summary of differences.

As stated in the section 490.105(e)(6) discussion, State DOTs may adjust their established 4-year targets when they submit their State Biennial Performance Report just after the midpoint of the performance period (*i.e.*, Mid Performance Period Progress Report, described in section 490.107(b)(2)). The MPOs are required to establish targets 180 days after the date on which the relevant State DOT(s) establishes their targets, as specified in 23 U.S.C. 134(h)(2)(C). If a State DOT adjusts a target, as allowed under the proposed sections 490.105(e)(6) and 490.107(b)(2), any relevant MPOs would be required to also re-establish targets for the same measures within 180 days. However, FHWA is proposing that the MPO only be required to re-establish the target if the MPO had originally elected to establish a target supporting the State DOT target for that measure in section 490.105(f)(3). In that case, the adjusted State target could directly impact an MPO's investment decisionmaking. Specifically, FHWA proposes in section 490.105(f)(7) that if a State DOT adjusts its 4-year target in the State DOT's Mid Performance Period Progress Report and the MPO established the relevant target by supporting the State DOT target as allowed under section 490.105(f)(3), then the MPO would be required, within 180 days, to report to the State DOT if they either: (1) Agree to plan and program projects so that they contribute toward the accomplishment of State DOT adjusted target, or (2) commit to its own quantifiable 4-year target for the metropolitan planning area. Since a single, unified peak hour travel time target and a single, unified traffic congestion target would be established for each applicable urbanized area as discussed in section 490.105(e)(8), FHWA expects that if either of these 4-year targets need adjustment, all involved MPO(s) and State DOT(s) would collectively adjust target(s) in a manner that is documented and mutually agreed upon by all State DOTs and MPOs.

As with State DOTs, FHWA recognizes that MPOs would need to consider many factors in establishing targets, such as uncertainties in funding, changing priorities, and external factors outside the control of the MPO. Thus, FHWA proposes in section 490.105(f)(8) that MPOs may adjust their established 4-year target in a manner that is consistent with the process MPOs and State DOTs agreed upon. The FHWA recognizes that for many MPOs the establishment of targets, especially for the first performance period, would be new and challenging and that there may be a need to revisit targets during the 4-year performance period. The FHWA requires State DOTs and MPOs to coordinate with each other throughout the performance period with respect to any target adjustments so their targets are consistent to the maximum extent practicable.

In section 490.105(f), FHWA proposes that the method by which MPOs would report their established baseline condition/performance, targets, and progress toward achieving targets would be as specified in section 490.107(c). The FHWA further proposes in 490.105(f)(8) that the State would be able to provide MPO targets to FHWA on request after targets are established or adjusted by MPOs within the State. The FHWA believes that, through the coordination between a State DOT and relevant MPOs, the reporting on MPO progress can be shared between these two entities. However, FHWA expects to be able to request from a State DOT the MPO targets and reports on progress, as needed, to better understand performance expectations and outcomes in urbanized areas across the country. The State DOT and MPO would document the target establishment reporting process. The FHWA encourages State DOTs to work with multiple MPOs to mutually agree on a process for reporting that would provide a sufficient level of consistency to understand performance in urbanized areas collectively across the State.

Discussion of Section 490.107 Reporting on Performance Targets

Proposed reporting requirements for measures identified in section 490.207(a) are discussed in section 490.213 of the first performance management NPRM; and performance target reporting requirements specific to pavement condition measures in sections 490.307(a)(1) through (c)(4) and bridge condition measures in sections 490.407(c)(1) and (c)(2) are included in the second performance management NPRM. The discussions specific to those measures will not be repeated in this NPRM. Please see the docket for proposed Subpart A in its entirety for additional information.

Pursuant to 23 U.S.C. 150(e), State DOTs are required to submit reports on performance targets and progress in achieving established targets to FHWA not later than October 1, 2016, and every 2 years thereafter. The FHWA evaluated whether there were any existing reports that could be used to meet these 23 U.S.C. 150(e) reporting requirements. For the non-HSIP related measures, FHWA determined that none of the existing reporting requirements met the statutorily required timing. In addition, none of the existing reports currently provide the consistency needed to implement performance management nationally. For these reasons, FHWA proposes a new biennial report to meet the statutory requirements.

The FHWA proposes in section 490.107 for State DOT performance reporting to be used:

- In the determination of significant progress toward achieving NHPP and NHFP targets;
- to provide some of the information needed for FHWA to report to Congress on the performance-based planning process evaluation of each State DOT as required by 23 U.S.C. 135(h);
- to understand performance needs, expectations, and progress at a State, regional, and national level; and
- to provide for transparency by communicating the content of the report to the public on an externally facing Web site in a downloadable format.

In section 490.107, FHWA proposes the minimum requirements that State DOTs and MPOs would follow to report targets for all measures identified in section 490.105(c), which include the proposed measures in both this performance management NPRM and the second performance management NPRM. In section 490.107(a), FHWA proposes that all performance targets described in section 490.105 would be subject to biennial performance reporting in this section. However, reporting on performance targets for carrying out the HSIP would be in accordance with section 490.213. In the first performance measure rulemaking, published as a final rule on March 15, 2016, FHWA requires a 1 calendar year period as the basis for measurement, target establishment, and reporting. As discussed in section 490.101 of that Rule, a 1-year period is required to align the safety measures with the requirements for the common measures reported as a requirement of 23 U.S.C. 402. The FHWA also proposes that State DOTs use an electronic template to deliver the report proposed in section 490.107(a)(3). The FHWA intends to provide additional guidance regarding the template which will include fields to capture all of the information that would be required to be reported under this rulemaking.

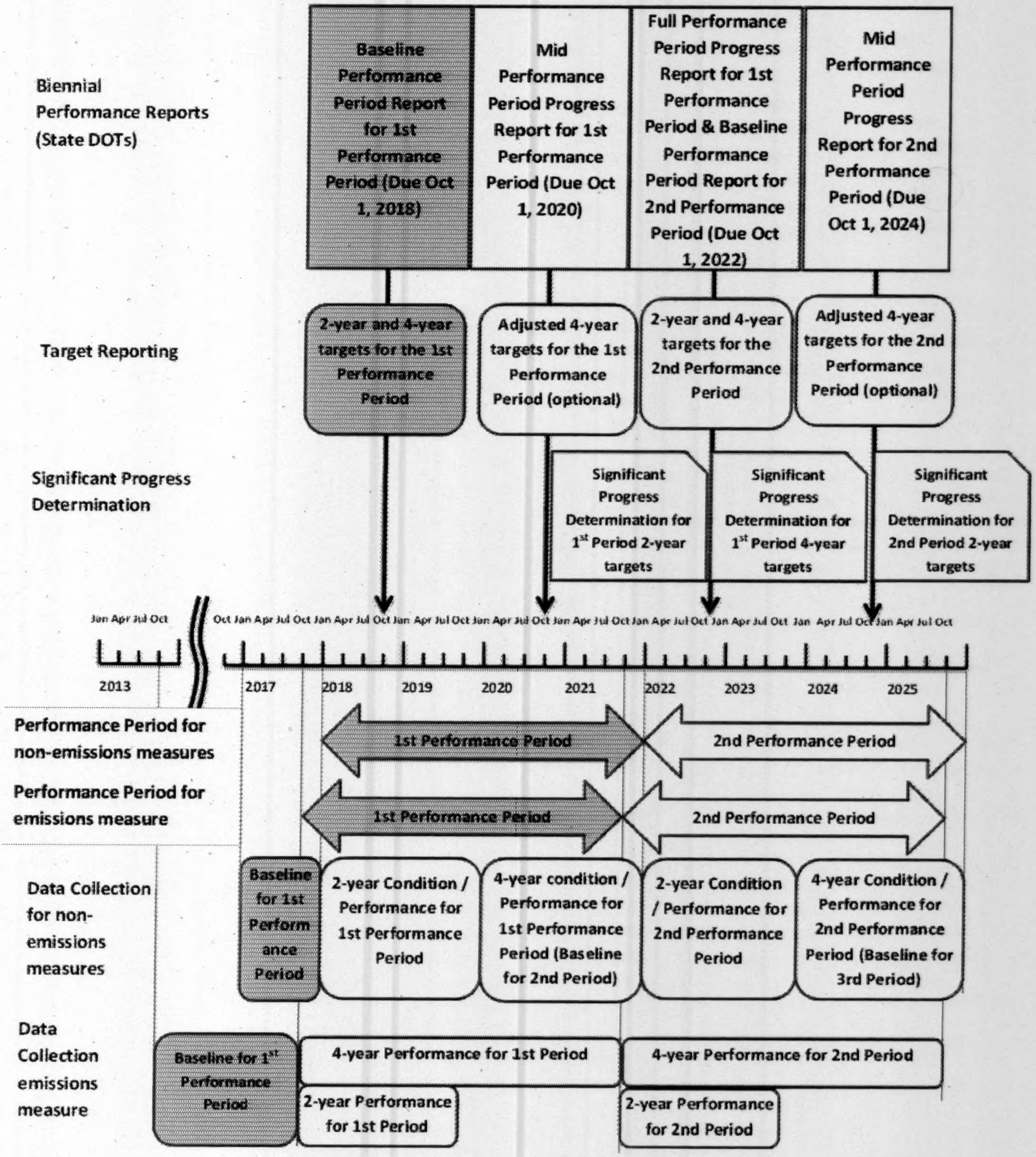
The FHWA anticipates the final rule for the pavement and bridge condition performance measures (proposed in the second performance management NPRM) to be effective no later than October 1, 2016, and anticipates that the final rule for this proposal to be effective no later than October 1, 2017. However, 23 U.S.C. 150(e) requires State DOTs to submit reports on performance targets and progress in achieving established targets to FHWA not later than October 1, 2016. To meet the statutory deadlines for the first State DOT performance report due in 2016, FHWA proposes the minimum reporting requirements that would be followed by State DOTs in section 490.107(a)(4). The FHWA proposes that State DOTs would submit an Initial State Performance Report to FHWA by October 1, 2016. In that report, the State DOTs shall include: (1) The condition/performance of the NHS in the State derived only from the available data in HPMS and NBI; (2) the effectiveness of the investment strategy document in the State asset management plan for the NHS; (3) progress toward targets the State DOT would be required to establish, which may only be a description of how State DOTs would coordinate with relevant MPOs and other agencies in target selection for the targets to be reported in the first State Biennial Performance Report in 2018; and (4) the ways in which the State is addressing congestion at freight bottlenecks.

Pursuant to 23 U.S.C. 150(d)(1), FHWA proposes in section 490.107(a)(5) that State DOTs would establish targets within 1 year of the effective date of applicable rule and the State DOTs would report the initial targets to FHWA. In this section, FHWA proposes that State DOTs submit their 2-year and 4-year targets for the first performance period to FHWA either within 30 days of target establishment by amending the Initial State Performance Report or on the due date of the first Baseline Performance Report, whichever comes first. The related NPRMs are being published on individual schedules. This creates the possibility that State DOTs will be required to establish targets for some performance measures, such as those published in the second performance management NPRM, well before the first Baseline Performance Report is due in October 2018. This proposal ensures timely reporting of targets, and allows FHWA to begin to develop a national story around targets sooner.

For consistent State DOT and FHWA reporting, FHWA proposes a 4-year performance period in section 490.105(e)(4). The FHWA recognizes the need for uniform data collection timing in order to ensure consistency in reporting and repeatable target establishment and progress evaluation processes. Thus, in subsequent sections, FHWA proposes the timing of data collection based on the specified performance periods, described in section 490.105(e)(4). The FHWA proposes that data collection requirements for the established measures support the reporting requirements in this section and be in accordance with the respective Data Requirements section for each measure (see section 490.103). To ensure consistency in reporting, FHWA proposes that the reported baseline condition/performance be derived from the latest data collected through the beginning date of a performance period, the reported actual 2-year condition/performance be derived from the latest data collected through the midpoint of a performance period, and the reported actual 4-year condition/performance be derived from the latest data collected through the end date of a performance period. This is illustrated in Figures 1 and 2 in the discussion for section 490.105(e)(4).

The FHWA proposes in section 490.107(b) that State DOTs submit to FHWA three types of Biennial Performance Reports: Baseline Performance Period Report, Mid Performance Period Progress Report and Full Performance Period Progress Report. The FHWA proposes to make a distinction between the three reports to emphasize the differences in content while aligning the reporting process to the proposed target establishment, progress evaluation, and other performance reporting requirements. Figures 3–5 illustrate the proposed reporting timelines for the three types of Biennial Performance Reports. The proposed requirements identify three distinct biennial performance reports (baseline, mid, and full) and State DOTs will be expected to provide information for at least one of these reports every 2 years. Because these reports would be required for consecutive 4-year performance periods, the information provided in the Full Performance Period Report would be provided at the same time and may include some of the same information as the Baseline Performance Period Report for the next performance period. As discussed previously, FHWA is proposing to provide for an electronic template that State DOTs would use to capture the information required in each of the three reports discussed in section 490.107(b). It is envisioned that this electronic template would provide the State DOT all of the relevant fields for the information that would be due at the corresponding 2-year point. This approach would allow State DOTs to provide all of the required baseline and progress reporting information at one time. The proposed regulations identify three distinct reports to clarify the purpose and timing of information that would be required to be reported every 2 years.

Discussion of Baseline Performance Period Reports


Biennial Performance Reports (State DOTs)
Baseline Performance Period Report for 1st Performance Period (Due Oct 1, 2018)
Mid Performance Period Progress Report for 1st Performance Period (Due Oct 1, 2020)
Full Performance Period Progress Report for 1st Performance Period & Baseline Performance Period Report for 2nd Performance Period (Due Oct 1, 2022)
Mid Performance Period Progress Report for 2nd Performance Period (Due Oct 1, 2024)
Target Reporting
2-year and 4-year targets for the 1st Performance Period
Adjusted 4-year targets for the 1st Performance Period (optional)
2-year and 4-year targets for the 2nd Performance Period
Adjusted 4-year targets for the 2nd Performance Period (optional)
Significant Progress Determination
Significant Progress Determination for 1st Period 2-year targets
Significant Progress Determination for 1st Period 4-year targets
Significant Progress Determination for 2nd Period 2-year targets
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Performance Period for non-emissions measures
1st Performance Period
2nd Performance Period
Performance Period for emissions measure
1st Performance Period
2nd Performance Period
Data Collection for non-emissions measures
Baseline for 1st Performance Period
2-year Condition / Performance for 1st Performance Period
4-year condition / Performance for 1st Performance Period (Baseline for 2nd Period)
2-year Condition / Performance for 2nd Performance Period
4-year Condition / Performance for 2nd Performance Period (Baseline for 3rd Period)
Data Collection emissions measure
Baseline for 1st Performance Period
4-year Performance for 1st Period
4-year Performance for 2nd Period
2-year Performance for 1st Period
2-year Performance for 2nd Period

Figure 3 – Biennial Performance Reports – The Baseline Performance Period Report

The FHWA proposes the requirement for the Baseline Performance Period Report in section 490.107(b)(1), where the State DOTs would be required to submit a Baseline Performance Period Report no later than October 1st of the first year of a performance period. The FHWA is proposing that the first performance period would begin on January 1, 2018, for the measures identified in section 490.105(c)(1) through (c)(7) and would begin on October 1, 2017, for emission measure identified in section 490.105(c)(8). Although the performance periods may be different, the reporting for all the measures in 490.105(c) would follow the same schedule. State DOTs would submit their Initial State Performance Report no later than October 1, 2018. Subsequent Baseline Performance Period Reports would be due no later than October 1st every 4 years thereafter.

The required contents for the Baseline Performance Period Report are discussed in section 490.107(b)(1)(ii). The FHWA is proposing that the Baseline Performance Period Report would be the official source of the non-safety targets established by the State DOT. To document the established targets, FHWA proposes in section 490.107(b)(1)(ii)(A) that State DOTs would report both their established 2-year and 4-year targets for each measure listed in section 490.105(c) for the current performance period. Additionally, if a State DOT elects to establish additional targets as described in sections 490.105(e)(3) and 490.105(e)(9)(iv), the State DOT would be required to include these targets (both 2-year target and 4-year target) in the report.

Although FHWA would not approve the State DOT submitted targets, a discussion of the basis for each established target would be included in the Baseline Performance Period Report. The FHWA believes that this discussion is needed to explain the State DOT's basis for the selection of a target. The FHWA intends to publish the State DOT established targets on a publicly available Web site along with the State DOT's discussion of the basis for each target selection. Although other MAP–21 required plans and reports may discuss and use targets, FHWA is proposing that only the targets reported in the Baseline Performance Period Report and the HSIP report would be used by FHWA in carrying out the requirements of 23 CFR 490, as they are the targets established by the State DOT to meet the requirements of 23 U.S.C. 150(d).

The FHWA proposes in section 490.107(b)(1)(ii)(B) that the State DOTs report baseline condition/performance associated with each target reported to represent the latest condition/performance data collected through the beginning date of a performance period. Because the first performance period for the measures in section 490.105(c)(1) through (c)(7) is proposed to begin on January 1, 2018, the baseline condition/performance for this performance period would be the most recent condition/performance that represents actual condition/performance through December 31, 2017. As the first performance period for the on-road mobile source emissions measure in section 490.105(c)(8) is proposed to begin on October 1, 2017, State DOTs would establish baseline performance of a 4-year cumulative emissions reduction resulting from CMAQ projects from fiscal year 2014 through fiscal year 2017 (ending September 30, 2017) in the CMAQ Public Access System, as described in section 490.809. The CMAQ Public Access System contains 20 years of past data. Since all past data in the CMAQ Public Access System may not have the necessary values for the proposed measure, FHWA believes that State DOTs should revisit the data for CMAQ projects from fiscal year 2014 through fiscal year 2017 to improve baseline performance establishment which would ultimately help the State DOTs in their target establishment. Should a State DOT elect to establish additional targets, as described in sections 490.105(e)(3) and 490.105(e)(9)(iv), the State DOT would report baseline condition/performance that represent the applicable areas in addition to the statewide baseline condition/performance. As an example, for the Percent of the Interstate System providing for Reliable Travel Times measure (in section 490.507(a)(1)), would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times (sections 490.503(a)(1) and 490.513(b)) expressed in one tenth of a percent. Thus, FHWA proposes that a baseline condition/performance for this measure would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times expressed in one tenth of a percent. As a hypothetical example, a baseline condition/performance would be 37.7 percent for the proposed measure Percent of the Interstate System providing for Reliable Travel Times.

The FHWA proposes in section 490.107(b)(1)(ii)(C) that State DOTs would be required to also include a discussion in the Baseline Performance Period Report, of how the established 2-year and 4-year targets support longer term performance expectations in other performance-related plans, such as the State asset management plan and the long-range statewide transportation plan.

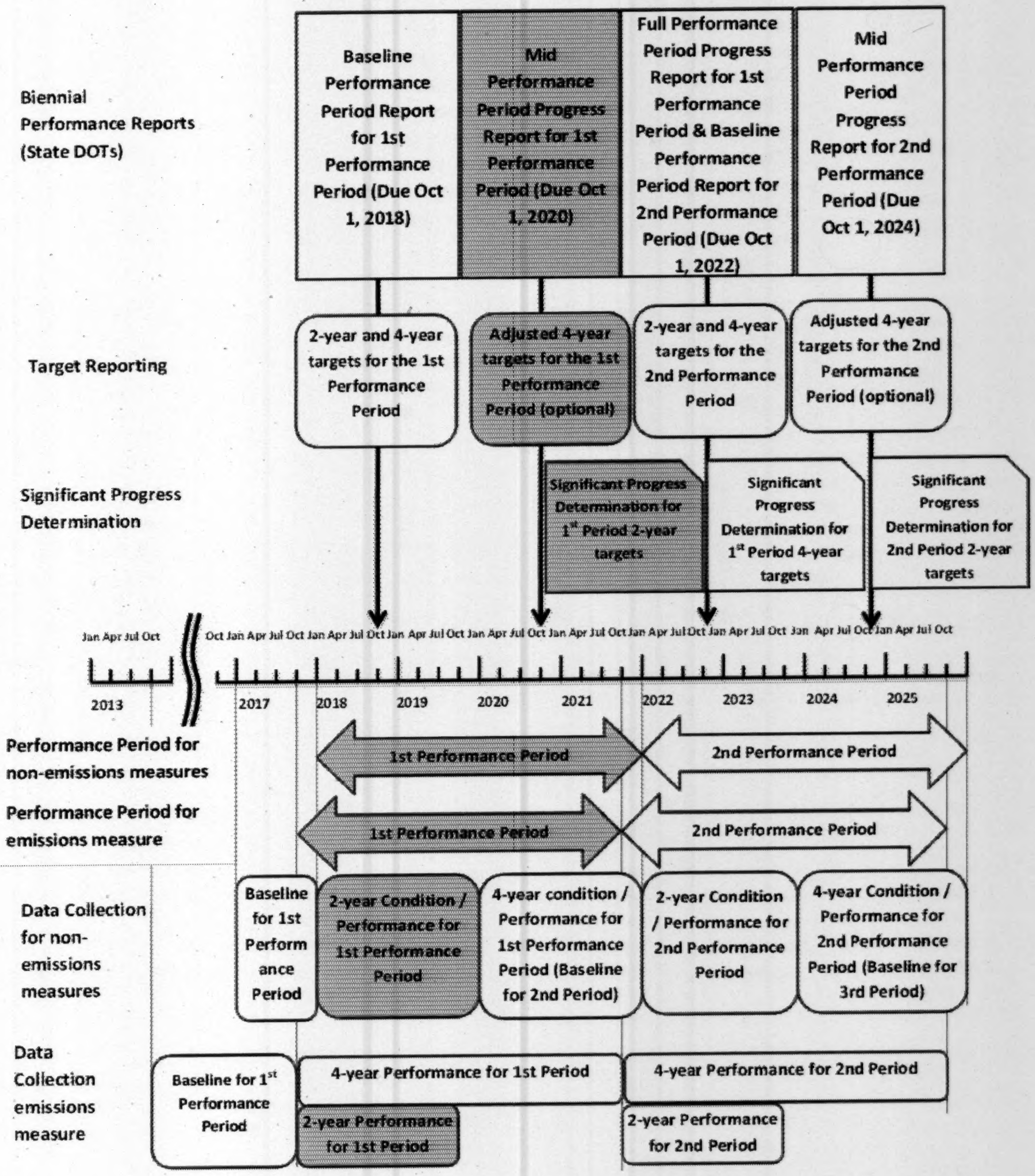
The FHWA proposes in section 490.107(b)(1)(ii)(D) that State DOTs would be required to report the geographic boundaries and Decennial Census population data used to determine target scope and establish any additional targets for urbanized and non-urbanized areas. Similarly, in section 490.107(b)(1)(ii)(E), FHWA proposes that State DOTs would be required to report the NHS network limits used for target establishment. The State DOT would report both the urbanized area boundaries and NHS limits used for target establishment by identifying the corresponding data inventory year of the HPMS that includes this information. Additionally, State DOTs would be required to report the latest Decennial population data for all urbanized areas in accordance with HPMS Field Manual. The FHWA would use this information in determining measure applicability and making its progress determinations in future years. It is the State's responsibility to ensure that the data entered into HPMS reflects the information that is used for target establishment.

The FHWA proposes in section 490.107(b)(1)(ii)(F) that, in each Baseline Performance Period Report, State DOTs would include discussions on the ways in which State DOTs are addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan. This content is required as part of the report under 23 U.S.C. 150(e)(4). To meet this requirement for State DOTs to address congestion at freight bottlenecks within the State, FHWA proposes that State DOTs would describe their activities to improve freight bottlenecks. For the purpose of this report only, freight bottlenecks would be defined as the segments of the Interstate System not meeting thresholds for freight reliability and congestion (section 490.613) and any other locations the State wishes to identify as bottlenecks based on its own freight plans or related documents if applicable. Further, the State DOT should reference its activities in other freight planning and programs that focus on improving freight bottlenecks, including: Comprehensive freight improvement efforts of Statewide Freight Planning or MPO freight plans; the Statewide Transportation Improvement Program (STIP) and TIP; regional or corridor level efforts; other related planning efforts; and operational and capital activities targeted to improve freight movement on the Interstate. The FHWA understands the multifaceted and multimodal nature of a freight bottleneck and that many State DOTs will likely define bottlenecks beyond the definition for this Part. The FHWA believes that due to the diversity in characteristics of bottlenecks and a lack of a universal definition or approach to measurement, this reporting on freight bottlenecks should be focused at a minimum on the performance measures, as proposed in section 490.607 and how those measures and the State DOT's associated targets might be impacted by other freight efforts currently underway, such as planning or programming. The FHWA encourages State DOTs to consider multimodal freight performance in transportation planning and programming efforts taking place beyond this rule. Upon development of the National Strategic Freight Plan, a State DOT shall specifically include its activities for addressing freight bottlenecks as part of that Plan in this report. The FHWA is seeking comment on this approach.

The FHWA proposes in section 490.107(b)(1)(ii)(G) that State DOTs, where applicable, would be required to describe the boundaries of EPA's designation of nonattainment or maintenance areas under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA. Please refer to the discussion in section 490.103(c) for more information.

As discussed in section 490.107(c)(3), MPOs serving a TMA with a population over 1 million representing nonattainment and maintenance areas for O_3, CO or PM NAAQS are required to submit CMAQ Performance Plan, required under 23 U.S.C. 149(l), as a part in the State Biennial Performance Report. In section 490.107(b)(1)(ii)(H), the FHWA proposes that State DOTs would report relevant MPOs' CMAQ Performance Plan, where applicable.

Discussion of Mid Performance Period Report



Biennial Performance Reports (State DOTs)
Baseline Performance Period Report for 1st Performance Period (Due Oct 1, 2018)
Mid Performance Period Progress Report for 1st Performance Period (Due Oct 1, 2020)
Full Performance Period Progress Report for 1st Performance Period & Baseline Performance Period Report for 2nd Performance Period (Due Oct 1, 2022)
Mid Performance Period Progress Report for 2nd Performance Period (Due Oct 1, 2024)
Target Reporting
2-year and 4-year targets for the 1st Performance Period
Adjusted 4-year targets for the 1st Performance Period (optional)
2-year and 4-year targets for the 2nd Performance Period
Adjusted 4-year targets for the 2nd Performance Period (optional)
Significant Progress Determination
Significant Progress Determination for 1st Period 2-year targets
Significant Progress Determination for 1st Period 4-year targets
Significant Progress Determination for 2nd Period 2-year targets
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Performance Period for non-emissions measures
1st Performance Period
2nd Performance Period
Performance Period for emissions measure
1st Performance Period
2nd Performance Period
Data Collection for non-emissions measures
Baseline for 1st Performance Period
2-year Condition / Performance for 1st Performance Period
4-year condition / Performance for 1st Performance Period (Baseline for 2nd Period)
2-year Condition / Performance for 2nd Performance Period
4-year Condition / Performance for 2nd Performance Period (Baseline for 3rd Period)
Data Collection emissions measure
Baseline for 1st Performance Period
4-year Performance for 1st Period
2-year Performance for 1st Period
4-year Performance for 2nd Period
2-year Performance for 2nd Period

Figure 4 – Biennial Performance Reports – The Mid Performance Period Report

The FHWA proposes the requirement for the Mid Performance Period Progress Report in section 490.107(b)(2). In section 490.107(b)(2)(i), FHWA proposes that State DOTs would be required to submit a Mid Performance Period Progress Report no later than October 1st of the third year of a performance period. The FHWA is proposing that the first performance period would begin on January 1, 2018, for the measures identified in section 490.105(c)(1) through (c)(7) and would begin on October 1, 2017, for the emission measure identified in section 490.105(c)(8). Although the performance periods may be different, the reporting for all the measures in section 490.105(c) would follow the same schedule. State DOTs would submit their first Mid Performance Period Progress Report no later than October 1, 2020, and subsequent Mid Performance Period Progress Reports would be due no later than October 1st every 4 years thereafter.

In section 490.107(b)(2)(ii), FHWA proposes the required contents for the Mid Performance Period Progress Report. In section 490.107(b)(2)(ii)(A), FHWA proposes that State DOTs would be required to report 2-year condition/performance in each Mid Performance Period Progress Report. As exhibited in Figure 4, FHWA proposes that the 2-year condition/performance would be reported to represent the actual condition/performance derived from the latest measured condition/performance through the midpoint of a performance period. Considering the first performance period is proposed to begin on January 1, 2018, for the measures identified in section 490.105(c)(1) through (c)(7), 2-year condition/performance for this performance period would be the most recent conditions/performance that represents actual conditions/performance through December 31, 2019, (illustrated in Figure 4). As defined in section 490.101, a target is a numeric value that represents a quantifiable level of condition/performance in an expression defined by a measure. The FHWA proposes that a target would be a single numeric value representing the intended or anticipated condition/performance level at a specific point in time. For example, the proposed measure, Percent of the Interstate System providing for Reliable Travel Times measure (in section 490.507(a)(1)), would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times (sections 490.503(a)(1) and 490.513(b)) expressed in one tenth of a percent. Thus, FHWA proposes that a target for this measure would be a percentage of directional mainline highways on the Interstate System providing for Reliable Travel Times expressed in one tenth of a percent. As a hypothetical example, a 2-year target for that measure would be 39.5 percent. The 2-year condition/performance would be 39.2 percent. For the on-road mobile emissions measure identified in section 490.105(c)(8), 2-year condition/performance for this performance period would be the estimated cumulative emissions reduction resulting from CMAQ projects from fiscal year 2018 through fiscal year 2019 in the CMAQ Public Access System, as described in section 490.809.

The FHWA proposes in section 490.107(b)(2)(ii)(B) that State DOTs would also include a discussion of progress made toward the achievement of 2-year targets established for the current performance period. In this discussion, State DOTs would present a comparison of 2-year condition/performance with the 2-year targets that were established for the performance period. For example, in the first Mid Performance Period Progress Report in 2020, a State would compare the actual condition/performance through 2019 with the 2-year targets established for the first performance period and discuss why targets were or were not achieved. This discussion could describe accomplishments achieved, planned activities, circumstances that led to actual conditions/performance, or any other information that State DOT feel would adequately explain progress. Although this explanation would not be used to determine significant progress, as described in section 490.109, this information would be made available to the public to provide an opportunity for the State DOT to discuss actual outcomes achieved. As an example, for the Percent of the Interstate System providing for Reliable Travel Times measure (in section 490.507(a)(1)), a hypothetical 2-year target for this measure is 39.5 percent (in section 490.105(e)). If 2-year condition/performance for this measure is 39.2 percent as discussed above, the State DOT would discuss why this target was not achieved in its Mid Performance Period Progress Report.

The FHWA proposes in sections 490.107(b)(2)(ii)(C) and (D) that, in each Mid Performance Period Progress Report, State DOTs would include discussions on the effectiveness of the investment strategy documented in the State asset management plan for the NHS and the ways in which State DOTs are addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, as described in section 490.107(b)(1)(ii)(F). This content is required as part of the report under 23 U.S.C. 150(e)(2) and (4). The FHWA recognizes that the Mid Performance Period Progress Report for the first performance period may be impacted by the timing of the implementation of the new NHS asset management plan requirement and the development of a final National Freight Strategic Plan. The FHWA intends to issue further guidance if the timing of these two plans would impact a State DOT's ability to comply with the requirements proposed in sections 490.107(b)(2)(ii)(C) and (D).

As discussed in section 490.105(e)(6), FHWA recognizes the challenges that State DOTs may face in target establishment and proposes to allow State DOTs to adjust their 4-year targets. The FHWA is proposing in section 490.107(b)(2)(ii)(E) that State DOTs would report any adjustments to their 4-year targets in the Mid Performance Period Progress Report. The FHWA proposes that this target adjustment allowance would be limited to this specific report and not allowed prior to, or following, the submittal of the Mid Performance Period Progress Report. For example, if a State DOT elects to adjust a 4-year target established in its first Baseline Performance Period Report in 2018, the State DOT would only be able to adjust the 4-year target in its Mid Performance Period Progress Report in 2020. In addition to reporting the adjusted 4-year target, the State DOT would be required to include a discussion on the basis for the adjusted 4-year target(s) for the performance period and a discussion on how the adjusted targets support expectations documented in longer range plans, such as the State asset management plan and the long-range statewide transportation plan. The FHWA intends to publish the State DOT established targets on a publicly available Web site with the initial target basis discussion. Any targets adjusted at the mid-point will also be reflected on the site.

The FAST Act introduced 23 U.S.C. 167(j), which requires FHWA to determine if a State has met or made significant progress toward meeting the performance targets related to freight movement. This was not part of MAP–21. To meet the requirements of the FAST Act, FHWA has incorporated language throughout this NPRM requiring the targets established for the measures in section 490.105(c)(6) to be included in the significant progress process. The FHWA has called these the NHFP targets. Section

490.107(b)(2)(ii)(F) is the first regulatory reference to the NHFP.

In section 490.107(b)(2)(ii)(F), FHWA proposes that the State DOTs would discuss the progress they have made toward the achievement of the 2-year targets reported in the current Baseline Performance Period Report that would had been established for the NHPP measures specified in sections 490.105(c)(1) through (c)(5) and the NHFP measures in section 490.105(c)(6). Additionally, State DOTs would provide information to discuss how the actual 2-year condition/performance levels compare to targets. Although this discussion would not be used to determine significant progress for the applicable measures, this information would be made available to the public to provide an opportunity for the State DOT to discuss actual outcomes related to the NHPP and NHFP. For example, the State DOT may use this discussion to explain how it effectively and efficiently delivered a program designed to achieve 2-year targets, how this may have resulted in actual condition/performance improvements for the NHPP and NHFP, and how the State DOT would deliver a program to make significant progress for 4-year targets for the NHPP and NHFP.

In section 490.107(b)(2)(ii)(G), FHWA is proposing that a State DOT would report any factors that it could not have foreseen and were outside of its control that impacted its ability to make significant progress for the 2-year targets for the NHPP or NHFP. The FHWA would use this discussion when considering extenuating circumstances discussed in section 490.109(e)(4).

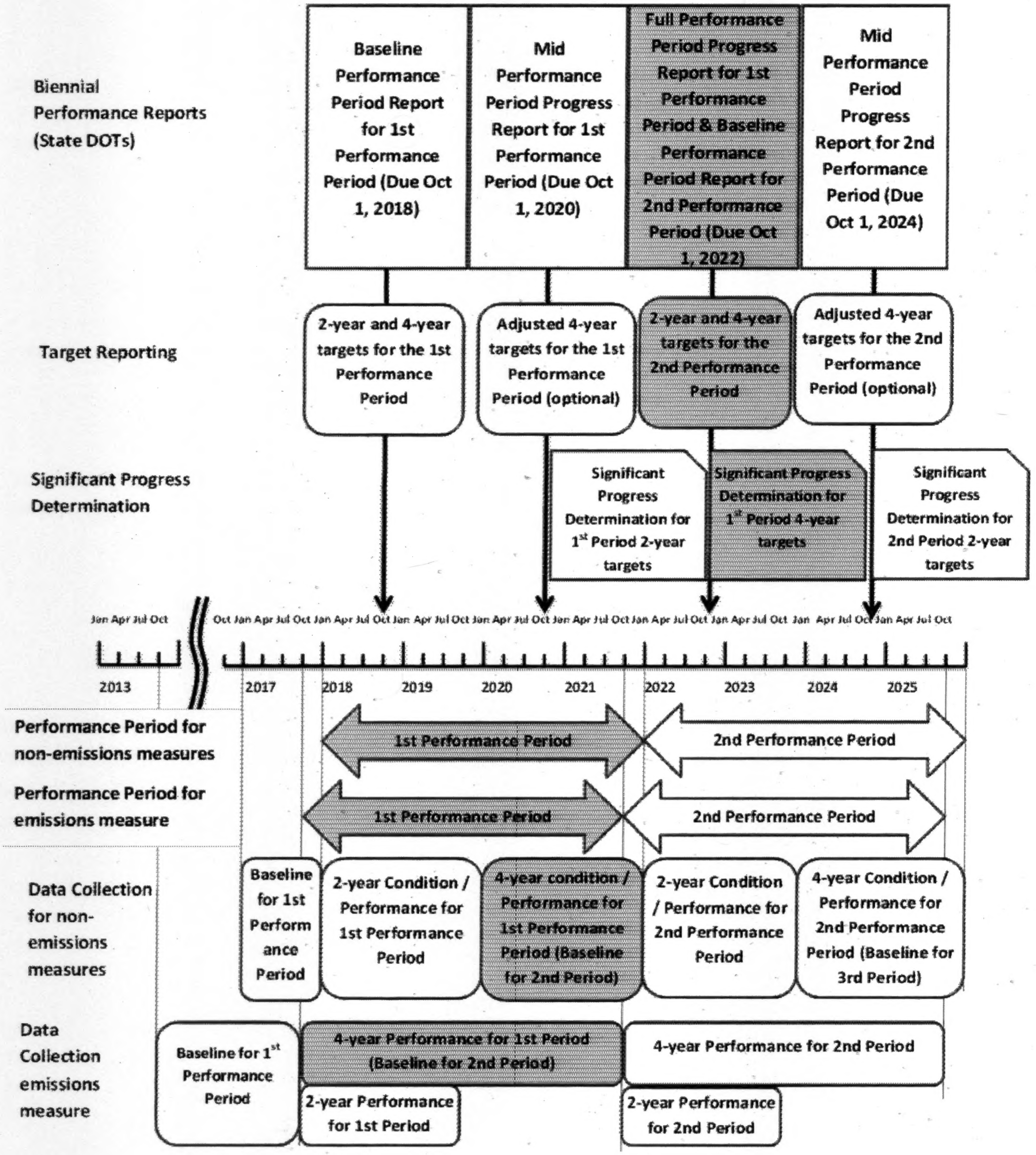
In section 490.107(b)(2)(ii)(H), FHWA proposes that if FHWA determines that a State DOT has not made significant progress toward the achievement of any NHPP or NHFP targets in a biennial FHWA determination, then the State DOT would include a description of the actions it will undertake to achieve those targets as required, respectively, under 23 U.S.C. 119(e)(7) or 167(j).

For example, for the NHPP or the NHFP, if FHWA determines that a State DOT has not made significant progress (as provided in section 490.109(e)(2)) for either the 2-year or 4-year significant progress determination, then the State DOT would include a description of the actions it would undertake to achieve its conditions/performance with respect to all related measures (section 490.109(f)) in its next Biennial Progress Report. If FHWA determines that the State DOT has achieved the target or made significant progress, then the State DOT does not need to include such description in the next Biennial Progress Report.

For the NHPP targets, the FAST Act amended the language in MAP–21, and changed the determination period from being based on looking back over "two consecutive determinations" (a 4-year period) to a single biennial FHWA determination which looks back over a 2-year period. This is a change from the language presented in the second NPRM, but it is required to be consistent with the amended statute.

As discussed in section 490.107(c)(3), MPOs serving a TMA with a population over 1 million representing nonattainment and maintenance areas for O_3, CO, or PM NAAQS are required to submit CMAQ Performance Plan, required under 23 U.S.C. 149(l), as a part in the State Biennial Performance Report. In section 490.107(b)(2)(ii)(I), FHWA proposes that State DOTs would report relevant MPOs' CMAQ Performance Plan, where applicable.

Discussion of Full Performance Period Reports


Biennial Performance Reports (State DOTs)
Baseline Performance Period Report for 1st Performance Period (Due Oct 1, 2018)
Mid Performance Period Progress Report for 1st Performance Period (Due Oct 1, 2020)
Full Performance Period Progress Report for 1st Performance Period & Baseline Performance Period Report for 2nd Performance Period (Due Oct 1, 2022)
Mid Performance Period Progress Report for 2nd Performance Period (Due Oct 1, 2024)
Target Reporting
2-year and 4-year targets for the 1st Performance Period
Adjusted 4-year targets for the 1st Performance Period (optional)
2-year and 4-year targets for the 2nd Performance Period
Adjusted 4-year targets for the 2nd Performance Period (optional)
Significant Progress Determination
Significant Progress Determination for 1st Period 2-year targets
Significant Progress Determination for 1st Period 4-year targets
Significant Progress Determination for 2nd Period 2-year targets
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2nd Performance Period
Performance Period for emissions measure
1st Performance Period
2nd Performance Period
Data Collection for non-emissions measures
Baseline for 1st Performance Period
2-year Condition / Performance for 1st Performance Period
4-year condition / Performance for 1st Performance Period (Baseline for 2nd Period)
2-year Condition / Performance for 2nd Performance Period
4-year Condition / Performance for 2nd Performance Period (Baseline for 3rd Period)
Data Collection emissions measure
Baseline for 1st Performance Period
4-year Performance for 1st Period (Baseline for 2nd Period)
2-year Performance for 1st Period
4-year Performance for 2nd Period
2-year Performance for 2nd Period

Figure 5 –Biennial Performance Reports – The Full Performance Period Report

The FHWA proposes the requirement for the Full Performance Period Progress Report in section 490.107(b)(3). In section 490.107(b)(3)(i), FHWA proposes that State DOTs be required to submit a Full Performance Period Progress Report no later than October 1st of the first year following the completion of a performance period. The FHWA is proposing that the first performance period would begin on January 1, 2018, for the measures identified in section 490.105(c)(1) through (c)(7) and would begin on October 1, 2017, for emission measure identified in section 490.105(c)(8). Although the performance periods may be different, the reporting for all the measures in section 490.105(c) would follow the same schedule. State DOTs would submit their first Full Performance Period Progress Report no later than October 1, 2022, and subsequent Full Performance Period Progress Reports would be due no later than October 1st every 4 years thereafter.

In section 490.107(b)(3)(ii), FHWA proposes the required contents for Full Performance Period Progress Report.

In section 490.107(b)(3)(ii)(A), FHWA proposes that State DOTs would be required to report 4-year condition/

performance in each Full Performance Period Progress Report. As exhibited in Figure 5, FHWA proposes that the 4-year condition/performance be reported to represent the actual condition/performance derived from the latest measured condition/performance through the end of a performance period. Considering the first performance period is proposed to begin on January 1, 2018, for the measure identified in section 490.105(c)(1) through (c)(7) and on October 1, 2017, for the measure identified in section 490.105(c)(8), the 4-year condition/performance for this performance period would be the most recent conditions/performance that represents actual conditions/performance through December 31, 2021 (illustrated in Figure 5). For the on-road mobile emissions measure identified in section 490.105(c)(8), 4-year condition/performance for this performance period would be the 4-year cumulative emissions reduction resulting from CMAQ projects from fiscal year 2018 through fiscal year 2021 in the CMAQ Public Access System, as described in section 490.809. As indicated in Figure 5, the reported 4-year condition/performance in a Full Performance Period Progress Report would be the baseline condition/performance for next performance period for all measures.

As an example, for the Percent of the Interstate System providing for Reliable Travel Times measure (in section 490.507(a)(1)), an hypothetical 4-year target for this measure is 38.5 percent (in section 490.105(e)). If 4-year condition/performance for this measure is 37.7 percent as discussed above, the State DOT would discuss why this target was not achieved in their Full Performance Period Progress Report.

The FHWA proposes in section 490.107(b)(3)(ii)(B) that the State DOTs would also include a discussion of progress made toward the achievement of 4-year targets established for the relevant performance period. In this discussion, State DOTs would present a comparison of 4-year condition/performance with the 4-year targets that were established for the performance period. For example, in the first Full Performance Period Progress Report in 2022, a State DOT would compare the actual condition/performance through the end of the performance period with the 4-year targets established for the first performance period and discuss why targets were or were not achieved. This discussion could describe accomplishments achieved, planned activities, circumstances that led to actual conditions/performance or any other information that State DOT would feel would adequately explain progress. Although this explanation would not be used in the determination of significant progress, this information would be made available to the public to provide an opportunity for the State DOT to discuss actual outcomes achieved.

As discussed in sections 490.107(b)(2)(ii)(C) and (D) for the Mid Performance Period Progress Report, FHWA also proposes in sections 490.107(b)(3)(ii)(C) and (D) that in each Full Performance Period Progress Report, State DOTs would include discussions on the effectiveness of the investment strategy documented in their State asset management plans for the NHS and the ways in which State DOTs are addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, as described in section 490.107(b)(1)(ii)(F). Please refer to the discussion of sections 490.107(b)(1)(ii)(F), 490.107(b)(2)(ii)(C) and (ii)(D) for more information.

In section 490.107(b)(3)(ii)(E), FHWA proposes that the State DOTs would discuss the progress they have made toward the achievement of the 4-year targets reported in the current Baseline Performance Period Report, or adjusted in the current Mid Performance Period Progress Report, that would have been established for the NHPP measures specified in sections 490.105(c)(1) through (c)(5) and the NHFP measures specified in section 490.105(c)(6). Additionally, State DOTs would provide information to discuss how the actual 4-year condition/performance levels compare with the applicable NHPP or NHFP targets. Although this discussion would not be used in the determination of significant progress for the applicable measures, this information would be made available to the public to provide an opportunity for the State DOT to discuss actual outcomes related to the NHPP and NHFP. For example, the State DOT may use this discussion to explain how it effectively and efficiently delivered a program designed to achieve targets and how this may have resulted in actual condition/performance improvements for the NHPP and NHFP.

In section 490.107(b)(3)(ii)(F), FHWA is proposing that a State DOT would report any factors that it could not have foreseen and were outside of its control that impacted its ability to make significant progress for the NHPP or NHFP 4-year targets. This discussion would be used by FHWA to consider the application of the proposed consideration of extenuating circumstances discussed in section 490.109(e)(4).

In section 490.107(b)(3)(ii)(G), FHWA proposes that if FHWA determines that a State DOT has not made significant progress toward the achievement of any NHPP or NHFP targets, then the State DOT would include a description of the actions it would undertake to achieve conditions/performances with respect to all related NHPP or NHFP measures within the measure group, as described in section 490.109(f).

For example, for the NHPP or NHFP, if FHWA determines that a State DOT has not made significant progress at either the 2-year or 4-year significant progress determination, then the State DOT would include a description of the actions it would undertake to achieve its targets with respect to all related measures in the next Biennial Progress Report. If FHWA determines that the State DOT has achieved or made significant progress, then the State DOT does not need to include this description in the next Biennial Progress Report.

As discussed in section 490.107(c)(3), MPOs serving a TMA with a population over one million representing nonattainment and maintenance areas for O_3, CO, or PM NAAQS are required to submit CMAQ Performance Plan, required under 23 U.S.C. 149(l), as a part in the State Biennial Performance Report. In section 490.107(b)(3)(ii)(H), FHWA proposes that State DOTs would report relevant MPOs' CMAQ Performance Plan, where applicable.

The FHWA proposes, in section 490.107(c), that MPOs document the manner in which they report their established targets. The MPOs would report their established targets to the relevant State DOTs in a manner that is agreed upon by both parties and documented. The FHWA proposes in section 490.105(e)(5), that MPOs would report targets to the State DOT in a manner that would allow the State DOT to provide FHWA, upon request, all of the targets established by relevant MPOs. In section 490.107(c)(2), FHWA also proposes that MPOs would report baseline condition/performance, and progress toward the achievement of their targets, in the system performance report in the metropolitan transportation plan, in accordance with 23 CFR 450. In sections 490.105(e)(3) and 490.105(d)(3), FHWA discusses how an urbanized area boundary or NHS limit changes during a performance period may lead to changes in the measures reported for an area/network and could impact how an established target relates to actual measured performance. The FHWA anticipates that changes in the MPA boundary could also impact how an established target relates to actual measured performance. Thus, FHWA seeks comment on whether the description of the MPA in place when establishing targets should be included in the system performance report and apply to the entire performance period.

As required in 23 U.S.C. 149(l), each MPO serving a TMA with a population over 1 million representing nonattainment and maintenance areas must develop a performance plan, updated biennially, to report baseline levels and the progress toward achievement of the targets for the CMAQ traffic congestion and on-road mobile source emissions measures. The FHWA proposes that the CMAQ performance plan is not required when the MPO does not serve a TMA with a population over 1 million; the MPO is attainment for O_3, CO and PM NAAQS; or the MPO's nonattainment or maintenance area for O_3, CO, or PM NAAQS is outside the urbanized area boundary of the TMA with a population over one million. Based on the data available,[82] FHWA has prepared a list[83] of the MPOs who might be subject to the CMAQ performance plan and included this list in the docket.

To encourage close coordination of the State DOT and MPOs in implementing the performance requirements and to streamline the reporting requirements, FHWA proposes in section 490.107(c)(3) that the MPOs meet the reporting requirements of the CMAQ performance plan in 23 U.S.C. 149(l) if the MPO's CMAQ performance plan is submitted as part of the State Biennial Performance Report as required under section 490.107(b). The CMAQ performance plan must be clearly documented in a separate section, as an attachment, of the State Biennial Performance Report. The FHWA is soliciting comments on other ways that will help further streamline the reporting requirements. Some options may include:

1. The MPOs could submit their CMAQ performance plans to FHWA separately from the State Biennial Performance Report as discussed in section 490.107(b). In this case, the State DOTs and the MPOs should coordinate to ensure that the MPOs' data are reflected in the State report in a consistent manner.

2. The MPOs could submit their performance information to the State DOTs to be included in the State Biennial Performance Report. In this case, the State DOTs would be responsible to ensure the CMAQ performance plan requirements are met.

The FHWA requests comments on other possible options that provide a streamlined approach to meet the performance requirements as discussed above.

The FHWA proposes that, similar to the State DOT Biennial Performance Reports, an MPO would have three distinct performance reports (Baseline Performance Period, Mid Performance Period Progress, and Full Performance Period Progress). These distinct reports would contain different content, but would align with target establishment and other State DOT performance reporting requirements.

As part of the CMAQ performance plan submitted with the State DOT's Baseline Performance Period Report, the MPO would include baseline condition/performance for each applicable measure. This could result in several different baseline condition/performances: One for each urbanized area's traffic congestion measure and up to five[84] for the on-road mobile source emission measure. The FHWA intends that "baseline level," as used in 23 U.S.C. 149(l), has the same meaning as "baseline condition/performance" as used in this section. Interpreting these phrases as having the same meaning will help ensure that State DOTs and MPOs are reporting consistent baseline condition/performance information. For the traffic congestion measure, the baseline condition/performance would be the same as that reported by the State DOT(s) under section 490.107(b)(1)(ii)(B).

The report would also include the 2-year and 4-year targets for these measures for the performance period. The establishment of targets is required in section 490.105(f). An MPO would use the same geographic area for both reporting its baseline condition/performance and establishing targets. For the traffic congestion measure, as described in section 490.105(f)(5), 2-year and 4-year targets would be identical to the targets reported by the relevant State DOT(s) under section 490.107(b)(1)(ii)(A). As required by 23 U.S.C. 149(l)(1)(C), the report would describe projects identified for CMAQ funding and how such projects would contribute to achieving the performance targets for the traffic congestion and on-road mobile source emissions measures.

The FHWA proposes that the CMAQ performance plan submitted with the State DOT's Mid Performance Period Progress Report would include the actual 2-year condition/performance derived from the latest measured condition/performance through the midpoint of the performance period for an MPO-reported traffic congestion target and the estimated cumulative emissions reduction resulting from CMAQ projects in the CMAQ Public Access System for each MPO-reported on-road mobile source emissions target. For the traffic congestion measure, the actual 2-year condition/performance would be identical to the 2-year condition/performance reported by the relevant State DOT(s) under section 490.107(b)(2)(ii)(A). For the on-road mobile source emissions measure, an MPO should use the same process the State DOT uses for determining the actual condition/performance, which is described in relation to section 490.107(b)(2)(ii). As required by 23 U.S.C. 149(l)(2), MPOs would assess the progress of the projects identified in the CMAQ performance plan submitted with the Baseline Performance Period Report toward achieving the 2-year targets for traffic congestion and on-road mobile source emissions measures. When doing this assessment, the MPO would compare the actual 2-year condition/performance with the 2-year target and document any reasons for differences between these two values.

If an MPO adjusts its 4-year target, the MPO would report that adjusted target, as provided in section 490.105(f)(7) and (f)(8). In addition, an MPO would update its description of projects identified for CMAQ funding and how those updates would contribute to achieving the performance targets for these measures. If an MPO has not adjusted its targets or does not have any changes to its description of projects, it may comply with this proposed requirement by making a statement to that effect.

The FHWA proposes the CMAQ performance plan submitted with the State DOT's Full Performance Period Progress Report would include the actual 4-year condition/performance derived from the latest measured condition/performance through the end of the performance period for each MPO-reported traffic congestion and estimated cumulative emissions reductions resulting from CMAQ projects in the CMAQ Public Access System for each MPO reported on-road mobile source emissions target. For the traffic congestion measure, the actual 4-year condition/performance would be identical to the 4-year condition/performance reported by the relevant State DOT(s) under section 490.107(b)(3)(ii)(A). For the on-road mobile source emissions measure, an MPO should use the same process used by the State DOT for determining the actual 4-year condition/performance, which is described in relation to section 490.107(b)(3)(ii). As required by 23 U.S.C. 149(l)(2), MPOs would assess the progress of the projects identified in the CMAQ performance plan submitted with the Baseline Performance Period Report and any updates to that description identified in the CMAQ performance plan submitted with the Mid Performance Period Progress Report toward achieving the 4-year targets for these measures. When doing this assessment, the MPO would compare the actual 4-year condition/performance with the 4-year target and document any reasons for differences between these two values.

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[82] Metropolitan Planning Area Data: FHWA HEPGIS (Accessed on 5/1/2015): *http://hepgis.fhwa.dot.gov/hepgismaps11/ViewMap.aspx?map=MPO+Boundaries√MPO+Boundary#*. The nonattainment/maintenance status of the MPOs areas was verified on 5/1/2015 based on EPA's Green Book (updated on April 14, 2015): *http://www.epa.gov/oaqps001/greenbk/gis_download.html*. Population Data for Urbanized Areas (Accessed on 8/7/2013): *https://www.census.gov/geo/reference/ua/urban-rural-2010.html*.

[83] Document "CMAQ Measure States and MPOs.pdf" in the docket.

[84] Measure for each of the applicable criteria pollutants and precursors (VOC, NO_X, CO, $PM_{2.5}$ and/or PM_{10}).

The FHWA has proposed that MPOs submit three distinct CMAQ performance plans with the State DOT's biennial performance reports (Baseline Performance Period, Mid Performance Period Progress, and Full Performance Period Progress). Because these plans would be required for consecutive 4-year performance periods, the information provided in the CMAQ performance plan submitted with the State DOT's Full Performance Period Report would be provided at the same time and may include some of the same information as the CMAQ performance plan submitted with the State DOT's Baseline Performance Period Report for the next performance period. As FHWA expects that State DOTs would provide all of the required baseline and progress reporting information at one time, and the MPO CMAQ performance plan would be submitted in a similar fashion. The proposed regulations identify three distinct plans to clarify the purpose and timing of information that would be required to be reported every 2 years. The FHWA intends to issue guidance to assist MPOs in developing and submitting these biennial plans.

The FHWA also seeks comments on other issues or problems State DOTs and MPOs might anticipate in meeting the reporting requirements of 23 U.S.C. 149(l) and 150(e) for the performance measures related to the CMAQ program and ideas for resolving any anticipated issues or problems.

Discussion of Section 490.109 Assessing Significant Progress Toward Achieving the Performance Targets for the National Highway Performance Program and National Highway Freight Program

Significant progress determinations for measures identified in section 490.207(a) are discussed in section 490.211 of the first performance measure rulemaking, published as a final rule March 15, 2016; and significant progress determination specific to pavement condition measures in sections 490.307(a)(1) through (c)(4) and bridge condition measures in sections 490.407(c)(1) and (c)(2) are included in the second performance measure NPRM. The discussions specific to these measures will not be repeated in this NPRM. Please see the docket for Subpart A in its entirety for additional information.

In section 490.109, FHWA proposes the method by which FHWA would determine if a State DOT has achieved or is making significant progress toward its performance targets in the NHPP, as required by 23 U.S.C. 119(e)(7), and NHFP, as required 23 U.S.C. 167(j). This determination would involve the measures identified in section 490.105(c)(1) through (c)(5), which include the proposed measures in both this performance management NPRM and the second performance management NPRM, and section 490.105(c)(6). Although this determination could directly impact State DOTs, MPOs could also be indirectly impacted as a result of the link between metropolitan and statewide planning and programming decisionmaking. This rulemaking discusses the approach that would be taken by FHWA to assess State DOT performance progress, but does not include a discussion on the method that may be used by FHWA to assess the performance progress of MPOs. Interested persons should refer to the updates to the Statewide and Metropolitan Planning regulations (RIN 2125–AF52) for discussion on the review of MPO performance progress.

The FHWA recognizes that there may be factors outside of a State DOT's control that could impact its ability to achieve a target. The FHWA considered these factors in its evaluation of different approaches to implement this provision. A number of factors were raised as part of the performance management stakeholder outreach sessions regarding target establishment and progress assessment, including: The impact of funding availability on performance outcomes, the reliability of the current state-of-practice to predict outcomes resulting from investments at a system level, the impact of uncertain events or events outside the control of a State DOT on performance outcomes, the need to consider multiple performance priorities in making investment trade-off decisions, and the challenges with balancing local and national objectives.

The FHWA recognizes that the State DOTs and MPOs have to consider multiple performance priorities in making investment trade-off decisions and that there are challenges with balancing local and national objectives. During outreach, stakeholders[85] raised a number of concerns regarding progress assessment, including:

- The desire to foster balanced and sound decisions rather than focusing on achieving one target at the expense of another;
- the desire to assess progress using quantitative and qualitative input; and
- the desire to avoid unachievable targets.

Thus, FHWA plans to implement an approach that balances the uncertainty facing State DOTs in predicting future performance with the need to provide for a fair and consistent process to determine compliance. The approach being proposed by FHWA is based on the following principles:

- Focus the Federal-aid highway program on the MAP–21 national goals in 23 U.S.C. 150(b); and
- recognize that State DOTs need to consider fiscal constraints in their target establishment.

Because targets would be established for an entire system, FHWA acknowledges that State DOTs may make small incremental changes within that system that would not necessarily appear in a quantitative assessment. In some instances, even a modest increase in improvement when evaluating on a system-wide basis, would constitute significant progress. Accordingly, FHWA proposes that for each NHPP target (targets for the measures identified in section 490.105(c)(1) through (c)(5)) and each NHFP (targets for the measures identified in section 490.105(c)(6)), progress toward the achievement of the target would be considered "significant" when either of the following occur: The actual condition/performance level is equal to or better than the State DOT established target, or the actual condition/

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[85] AASHTO (2013), *SCOPM Task Force Findings on MAP–21 Performance Measure Target-Setting. http://scopm.transportation.org/Documents/SCOPM%20Task%20Force%20Findings%20on%20Performance%20Measure%20Target-Setting%20FINAL%20v2%20(3-25-2013).pdf.*

performance is better than the State DOT identified baseline of condition/performance. The FHWA believes that any improvement over the baseline, which represents a 0.1 percent improvement, should be viewed as significant progress considering the fiscal challenges and financial uncertainties many State DOTs are faced with today. Although a change of 0.1 percent may appear insignificant, this degree of improvement to a highway network is difficult to achieve. In many State DOTs this level of change would require improvements to hundreds, if not thousands, of lane-miles of highway network. The FHWA reviewed the extent to which State DOTs have been able to actually change system conditions/performance of their highway networks in recent years to validate this view of significant progress. This review supports FHWA's belief that any improvement should be considered significant, as many State DOTs have seen minimal or no improvements in the condition/performance of their highway networks in recent years. This is the case even with the influx of funding State DOTs were able to utilize through the American Recovery and Reinvestment Act of 2009. For these reasons, FHWA believes that any improvement over the baseline should be viewed as significant progress.

The FHWA believes that State DOTs, through a transparent and public process, would want to establish or adjust targets that strive to improve the overall performance of the NHS and freight movement. For this reason, FHWA did not want to propose an approach to determine significant progress that would be difficult to meet, as it could discourage the establishment of "reach" targets due to the perceived uncertainties that would need to be assumed by State DOTs. The FHWA feels that the progress assessment approach proposed in this NPRM, which considers improvement from baseline conditions to be significant, would not discourage State DOTs from establishing targets to improve the overall condition/performance of the Interstate and non-Interstate System NHS, and freight movement.

The FHWA is proposing a three-step process to determine if a State DOT has made significant progress toward the achievement of its NHPP and NHFP targets. The FHWA would use this process to make a significant progress determination for the NHPP and NHFP each time the State DOT submits its Mid Performance Period Progress Report and its Full Performance Period Progress Report. This process is summarized below and discussed in more detail for each of the proposed regulations.

- Step 1: *Reporting Progress in the Biennial Performance Reports*—The State DOT would evaluate and report the progress it has made both toward the achievement of each individual target and for all related targets collectively established for the NHPP and NHFP measures (measures identified in section 490.105(c)(1) through(c)(5) and 490.105(c)(6)). This evaluation would be documented in the discussion of progress achieved since the most recent report. The State DOT would document in its Biennial Performance Reports any extenuating circumstances outside its control that may have impacted its ability to achieve progress on any of the targets.
- Step 2: *Consideration of Extenuating Circumstances*—The FHWA would review the completeness of the content provided in their Biennial Performance Reports and would determine if any documented extenuating circumstances would be considered in the progress assessment. A State DOT would provide any additional information to FHWA, upon request, if the report is incomplete.
- Step 3: *Evaluation of Actual Condition/Performance*—The FHWA would determine if the State DOT has made significant progress for each target using the following sources:
  - ○ Data contained within the HPMS for targets established for pavement condition measures, as specified in sections 490.105(c)(1) and (c)(2);
  - ○ Data contained in the NBI for targets established for bridge condition measures, as specified in section 490.105(c)(3);
  - ○ Data contained within the HPMS for targets established for system performance measures, as specified in sections 490.105(c)(4) and (c)(5);
  - ○ Data contained within the HPMS for targets established for Freight performance measures, as specified in sections 490.105(c)(6);
  - ○ Data to define the urbanized area boundary and NHS limits as documented in the State DOT Baseline Performance Period Report; and
  - ○ Population data, as defined by the most recent U.S. Decennial Census that was available when targets were first reported by the State DOT in their Baseline Performance Period Report.

The FHWA would use these biennial determinations to assess if the State DOT is in compliance with the NHPP[86] and NHFP[87] performance achievement provisions. For the NHPP and NHFP, the State DOTs are required to achieve or make significant progress toward their targets every biennial reporting period (every 2 years), and are to take additional reporting actions if FHWA determines significant progress is not made. The FHWA plans to issue guidance, following the publication of the Final Rule, establishing when the determination notification to the State DOTs will be made.

For the NHPP, the requirement for State DOTs to take the additional reporting actions would be based on each FHWA biennial determination. This is a change from the second NPRM, which proposed that the requirement for a State DOT to take the additional reporting actions would be based on two consecutive FHWA biennial determinations. As discussed in previous sections, the enactment of FAST Act introduced the significant progress determination requirements for the NHFP and removed the requirement that two consecutive reports (4 year period) be used in determining if a State DOT would be required to take additional reporting actions when the State DOT has made significant progress toward its NHPP targets. Thus, in this NPRM, the language has been changed to reflect the statutory language in FAST Act. The FHWA proposes, in this NPRM, that FHWA would determine whether or not a State DOT has achieved or make significant progress toward its NHPP and NHFP targets every biennial reporting period, and the determination on whether or not a State DOT would take additional reporting actions based on each of FHWA biennial determination.

In section 490.109(a), FHWA proposes that it would determine whether a State DOT has achieved or has made significant progress toward achieving each of the State DOT's targets for each of the NHPP and NHFP measures separately.

The FHWA proposes in section 490.109(b) that FHWA would determine whether a State DOT has or has not made significant progress for NHPP and NHFP targets at the midpoint and the end of each performance period.

In section 490.109(c), FHWA proposes that FHWA would determine significant progress toward the achievement of a State DOT's NHPP and NHFP targets after the State DOT submittal of the Mid Performance Period Progress Report and after the State DOT submittal of the Full Performance Period Progress Report. This process, which is described in the discussion of section 490.107(b), would follow the proposed schedule illustrated in Figures 4 and 5. Following this proposed frequency, the FHWA would make a significant progress determination for the NHPP and NHFP and assess compliance with the NHPP and NHFP performance achievement provisions every 2 years.

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[86] 23 U.S.C. 119(e)(7).

[87] 23 U.S.C. 167(j).

The FAST Act introduced 23 U.S.C. 167(j), which says "If the Administrator determines that a State has not met or made significant progress toward meeting the performance targets related to freight movement of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, the State shall include in the next report submitted under section 150(e) a description of the actions the State will undertake to achieve the targets, including . . ." The FHWA interprets the 2-year period referenced in 23 U.S.C. 167(j) as 2 years after the start of the performance period, which is consistent with 150(e) reporting requirements and the reporting regulations of this NPRM. This 2 year period is the period of time the State DOT has to establish targets, collect data, and provide information to FHWA. This interpretation allows FHWA to determine if a State DOT has made significant progress on its 2-year targets following the submittal of its Mid Performance Period Progress Report, and on its 4-year targets following the submittal of its Full Performance Period Progress Report.

The FHWA would notify all State DOTs within a reasonable time of the final determination and would advise on any subsequent need to address progress achievement in their next biennial reports (see 450.109(f)). The data reported to FHWA by the States would be available to the public and would be used to communicate a national performance story. The FHWA is developing a public Web site to share performance related information. This information would provide for greater transparency for FHWA programs.

The FHWA also expects that during a performance period, State DOTs would routinely monitor leading indicators, such as program delivery status, to assess if they are on track to make significant progress toward achievement of their NHPP and NHFP targets. If a State DOT anticipates it may not make significant progress, it is encouraged to work with FHWA and seek technical assistance during the performance period to identify the actions that can be taken to improve progress toward making significant progress. The FHWA also seeks comment on whether it should require State DOTs to more frequently (*e.g.,* annually) evaluate and report the progress they have made.

The FHWA desires to use national datasets in a consistent manner as a basis for making its NHPP and NHFP significant progress determinations. Thus, in section 490.109(d), FHWA proposes to use specific data sources that could be accessed by State DOTs and others if they chose to replicate FHWA's determinations. The data in these sources, specifically the HPMS, would be provided by State DOTs as proposed in Subparts E–F. To ensure a repeatable process, in section 490.109(d), FHWA is proposing to establish a specific date (August 15) to extract data from the HPMS for the measures proposed in this NPRM, as the HPMS is often updated. This "extraction" date is considered the earliest time data can be available in a national data source. This proposed "extraction" date considers the time State DOTs typically need to submit the data to HPMS, to process raw data, and to address missing or incorrect data that may be identified as a result of quality assessments conducted by the State DOT and/or FHWA. The proposed "extraction" date is necessary for FHWA to make significant progress determinations in a timely manner. The FHWA is proposing to extract metric data from the HPMS on August 15 to determine the actual performance of Interstate System and non-Interstate NHS for the Reliability and Peak Hour Travel Time measures, and Freight measures, as specified in sections 490.105(c)(4), (c)(5), and (c)(6). This date is needed to provide FHWA with sufficient time to make a determination of significant progress for NHPP and NHFP targets.

In section 490.109(e), FHWA proposes a process for the significant progress determination for each individual NHPP and NHFP target. In paragraph (e)(1), FHWA proposes that FHWA would assess how the target established by the State DOT compares to the actual condition/performance using the data/information sources described in section 490.109(d). This process is generally outlined in Step 3 of the 3-step process described earlier. The FHWA proposes, in section 490.109(e)(2), that FHWA would determine that a State DOT has made significant progress for each 2-year or 4-year target if either: (1) The actual condition/performance level is better than the baseline condition/performance reported in the State DOT Baseline Performance Period Report; or (2) the actual condition/performance level is equal to or better than the established target.

For illustrative purposes, 2-year and 4-year evaluations where improving targets were established for the first performance period are shown in Figure 6.

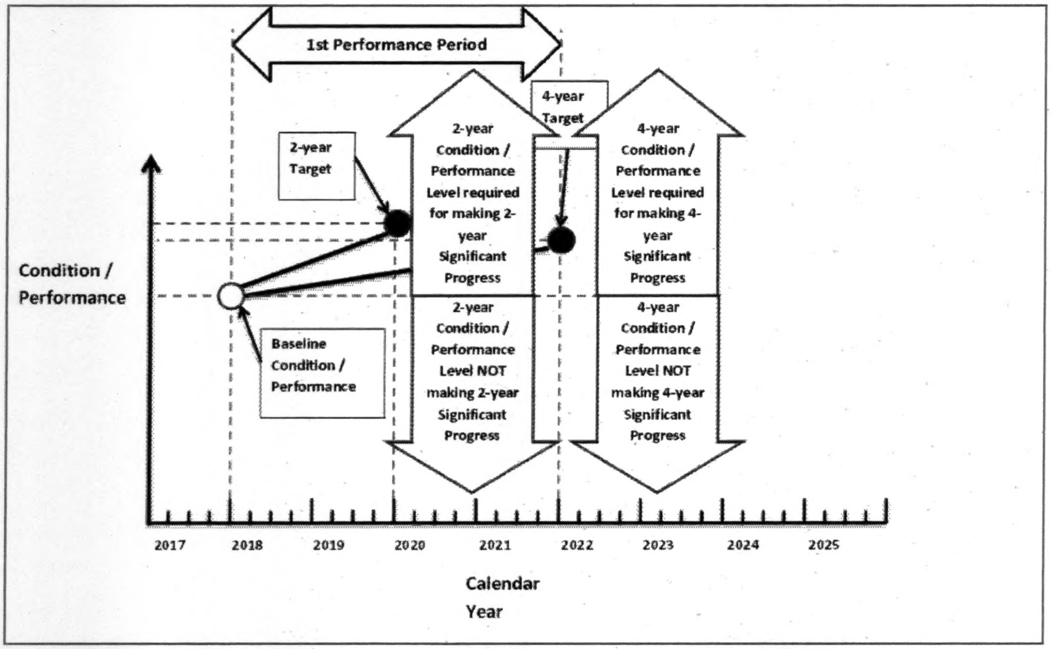
1st Performance Period
4-year Target
2-year Target
2-year Condition / Performance Level required for making 2-year Significant Progress
4-year Condition / Performance Level required for making 4-year Significant Progress
Condition / Performance
Baseline Condition / Performance
2-year Condition / Performance Level NOT making 2-year Significant Progress
4-year Condition / Performance Level NOT making 4-year Significant Progress
2017
2018
2019
2020
2021
2022
2023
2024
2025
Calendar Year

Figure 6 – First Performance Period: 2- and 4-year Significant Progress Determination for a 2-and 4-year Target (anticipated improving scenario)

The FHWA recognizes that State DOTs have to consider their fiscal situation in target establishment and acknowledges that, in some cases, anticipated condition/performance could be projected to decline from (or sustain) the baseline condition/performance due to lack of funding, changing priorities, etc. In these cases, State DOTs should document why they project a decline in condition in their Biennial Performance Reports as discussed in paragraph 490.107(b)(1)(ii)(A). The FHWA proposes that significant progress could still be made in cases where the established target indicates a decline from (or sustain) the baseline condition/performance. For the decline/sustain condition/performance scenario, FHWA proposes that significant progress is made for a target when actual condition/performance level is equal to or exceeds the target. For illustrative purposes, 2-year and 4-year evaluations where declining targets were established for the first performance period are shown in Figure 7.

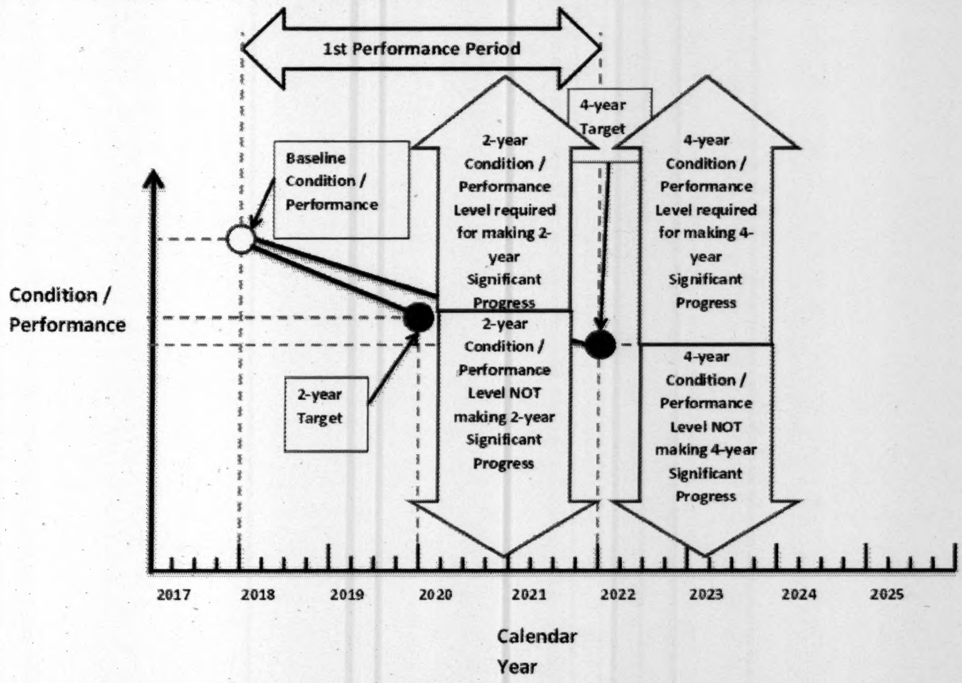
1st Performance Period
4-year Target
Baseline Condition / Performance
2-year Condition / Performance Level required for making 2-year Significant Progress
4-year Condition / Performance Level required for making 4-year Significant Progress
Condition / Performance
2-year Condition / Performance Level NOT making 2-year Significant Progress
4-year Condition / Performance Level NOT making 4-year Significant Progress
2-year Target
2017
2018
2019
2020
2021
2022
2023
2024
2025
Calendar Year

Figure 7 - First Performance Period: 2-and 4-year Significant Progress Determination for a 2-and 4-year Target (anticipated decline/sustain scenario)

As discussed in section 490.105(e)(7), FHWA recognizes the data limitation issues associated with the non-Interstate NHS travel time reliability measure (in section 490.507(a)(2)) prior to the start of the first performance period. Considering this limitation, FHWA proposes in section 490.105(e)(7) that for the first performance period, the State DOTs would not be required to report their 2-year targets and their baseline condition for the non-Interstate NHS travel time reliability measure at the beginning of the first performance period. Consequently, FHWA proposes in section 490.109(e)(3) that for the first performance period only, progress toward the achievement of 2-year targets for non-Interstate NHS travel time reliability measure would not be subject to FHWA determination under section 490.109(e)(2).

The FHWA proposes to accomplish this by categorizing the 2-year targets for the non-Interstate NHS travel time reliability measure as "progress not determined," which would exclude these targets from the FHWA determination under section 490.109(e)(2). The FHWA expects that some State DOTs would adjust their established 4-year targets at the midpoint of the first performance period because they may have had limited baseline data available to them when they first establish the 4-year target. For the first performance period, FHWA would determine significant progress toward the achievement of a State DOT's non-Interstate NHS travel time reliability measure targets based on HPMS data extracted on August15 of the year in which the Full Performance Period Progress Report is due. The FHWA recognizes that some State DOTs would be able to establish and report baseline condition and 2-year targets for the proposed non-Interstate NHS travel time reliability measure in their first Baseline Performance Period Report. However, FHWA proposes that the process established in this section apply to all State DOTs in order to ensure uniformity in the progress determination process.

In section 490.109(e)(4), FHWA proposes that if a State DOT does not provide sufficient data and/or information for FHWA to make a significant progress determination for NHPP or NHFP target(s), then that State DOT would be deemed to not have made significant progress for those individual target(s).

In section 490.109(e)(5), if a State DOT encounters extenuating circumstances beyond its control, the State DOT would document the explanation of the extenuating circumstances in the biennial performance report. This explanation would address factors that the State DOT could not have foreseen and were outside of its control when it established targets at the beginning of the performance period. If the explanation is accepted by FHWA, then the associated NHPP or NHFP target(s) would be classified as "progress not determined" and would not be subject to the requirement under section 490.109(f). If the explanation is not accepted by FHWA, then the State DOT would be deemed to not have made significant progress for the target. Proposed extenuating circumstances are listed in 490.109(e)(5). The list includes:

- Natural or man-made disasters causing delay in NHPP or NHFP project delivery, extenuating delay in data collection, and/or damage/loss of data system;
- sudden discontinuation of Federal Government furnished data due to natural and man-made disasters or lack of funding; and/or
- new law and/or regulation directing State DOTs to change metric and/or measure calculation.

In section 490.109(f), pursuant to 23 U.S.C. 119(e)(7) and 23 U.S.C. 167(j), FHWA has proposed that if that if

FHWA determines that a State DOT has not made significant progress for any NHPP or NHFP targets in a biennial determination, then the State DOT would include in its next Biennial Performance Report a description of the actions the State DOT will undertake to improve conditions/performances with respect to all related measures within the measure group. The FHWA proposed the related measures be grouped as follows:

- Interstate System pavement condition—both proposed measures Percentage of pavements of the Interstate System in Good condition in section 490.307(a)(1) and Percentage of pavements of the Interstate System in Poor condition in section 490.307(a)(2);
- Non-Interstate NHS pavement condition—both proposed measures Percentage of pavements of the non-Interstate NHS in Poor condition in section 490.307(a)(3) and Percentage of pavements of the non-Interstate NHS in Good condition in section 490.307(a)(4);
- NHS bridge condition—both measures Percentage of NHS bridges in Good condition in section 490.407(c)(1) and Percentage of NHS bridges in Poor condition in section in 490.407(c)(2);
- NHS travel time reliability—both measures Percent of the Interstate System providing for Reliable Travel Times in section 490.507(a)(1) and Percent of the non-Interstate NHS providing for Reliable Travel Times in section 490.507(a)(2); and
- Peak Hour Travel Time for an Urbanized Area—both measures Percent of the Interstate System where peak hour travel times meet expectations in section 490.507(b)(1) and Percent of the non-Interstate NHS where peak hour travel times meet expectations in section 490.507(b)(2). Please note the grouping for these measures is for each urbanized area separately.
- Freight movement on the Interstate System—both measures Percent of the Interstate System Mileage providing for Reliable Truck Travel Times in section 490.607(a), and Percent of the Interstate System Mileage Uncongested in section 490.607(b).

As a general example of this proposed approach, when a State DOT has not made significant progress for any one of the targets for NHS travel time reliability measures (Interstate or non-Interstate NHS), then that State DOT would, at a minimum, include in its next Biennial Performance Report a description of the actions the State DOT will undertake to improve conditions for NHS travel time reliability measures (Interstate or non-Interstate NHS). As for the peak hour travel time measures, if significant progress is not made for either urbanized area specific target (Interstate or non-Interstate NHS), as described in section 490.105(e)(8), for an urbanized area, then the State DOT would document the actions it will take to improve both the Interstate and non-Interstate NHS peak hour travel times such that both targets for the peak hour travel time measures will be achieved for that urbanized area.

States must provide description of the actions they will undertake in the next Biennial Performance Report. The FHWA strongly encourages States to add a description of their planned actions to their most recent Biennial Report within 6 months of the FHWA significant progress determination to ensure actions to achieve targets are taken in a timely manner, and to improve progress toward making significant progress for the applicable targets.

Tables 10 and 11 illustrate this proposed determination method for both the NHPP and NHFP measures. Table 10 includes the significant progress determination results in 2021 for the midpoint of the 1st performance period and the significant progress determination in 2023 for the end of the 1st performance period.

Table 10 – Example of NHPP and NHFP Significant Progress Determinations in 2021 and 2023

Measure	Baseline Condition / Performance for the 1st Performance Period	Significant Progress Determination in 2021 for the midpoint of the 1st Performance Period			Significant Progress Determination in 2023 for the end of the 1st Performance Period			Measure Group
		2-year target	2-year Condition / Performance	Significant progress made at the midpoint?	4-year target	4-year Condition / Performance	Period-end Significant progress made at the end of period?	
The Percentage of pavements in Good Condition on Interstate System – **statewide**	**40.0%**	*N/A*	40.0%	**Progress not determined**[88]	*38.5%*	37.7%	**No**	Interstate System pavement condition
The Percentage of pavements in Poor Condition on Interstate System– **statewide**	**7.0%**	*N/A*	7.0%	**Progress not determined**[89]	*5.2%*	6.0%	**Yes** by actual being better than the baseline	
Percentage of pavements in Good Condition on non-Interstate NHS – **statewide**	**35.0%**	*34.4%*	34.4%	**Yes** by achieving the 2-year target	*33.3%*	33.4%	**Yes** by achieving the 4-year target	Non-Interstate NHS pavement condition
Percentage of pavements in Poor Condition on non-Interstate NHS – **statewide**	**3.8%**	*2.9%*	2.9%	**Yes** by achieving the 2-year target	*2.3%*	2.2%	**Yes** by achieving the 4-year target	
Percentage of NHS bridges in Good Condition – **statewide**	**35.0%**	*34.5%*	34.9%	**Yes** by achieving the 2-year target	*34.0%*	33.4%	**No**	NHS Bridge condition

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[88] The FHWA proposes to categorizing the 2-year targets for the Interstate pavement condition measure as "progress not determined" for the first performance period. Please see sections 490.105(e)(7) and 490.109(e)(3) in the Second Performance Measure NPRM.

[89] Ibid

Measure	Baseline Condition / Performance for the 1st Performance Period	Significant Progress Determination in 2021 for the midpoint of the 1st Performance Period			Significant Progress Determination in 2023 for the end of the 1st Performance Period			Measure Group
		2-year target	2-year Condition / Performance	Significant progress made at the midpoint?	4-year target	4-year Condition / Performance	Period-end Significant progress made at the end of period?	
Percentage of NHS bridges in Poor Condition – **statewide**	**10.0%**	*9.3%*	8.9%	**Yes** by achieving the 2-year target	*7.5%*	8.5%	**Yes** by actual being better than the baseline	
Percent of the Interstate System providing for Reliable Travel Times– **statewide**	**80.0%**	*81.0%*	79.8%	**No**	*80.0%*	80.2%	**Yes** by achieving the 4-year target	NHS Reliable Travel Times
Percent of the non-Interstate NHS providing for Reliable Travel Times– **statewide**	**87.5%**	*N/A*	87.5%	**Progress not determined**[90]	*88.8%*	89.5%	**Yes** by achieving the 4-year target	
Percent of the Interstate System where peak hour travel times meet expectations – **Urbanized Area A**	**75.0%**	*76.3%*	75.1%	**Yes** by actual better than the baseline	*77.5%*	75.5%	**Yes** by actual being better than the baseline	Peak Hour Travel Times for Urbanized Area A
Percent of the non-Interstate NHS where peak hour travel times meet expectations – **Urbanized Area A**	**62.5%**	*64.4%*	62.9%	**Yes** by actual better than the baseline	*65.0%*	60.0%	**No**	

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[90] The FHWA proposes to categorizing the 2-year targets for the non-Interstate NHS travel time reliability measure as "progress not determined" for the first performance period. Please see sections 490.105(e)(10) and 490.109(e)(3).

Measure	Baseline Condition / Performance for the 1st Performance Period	Significant Progress Determination in 2021 for the midpoint of the 1st Performance Period			Significant Progress Determination in 2023 for the end of the 1st Performance Period			Measure Group
		2-year target	2-year Condition / Performance	Significant progress made at the midpoint?	4-year target	4-year Condition / Performance	Period-end Significant progress made at the end of period?	
Percent of the Interstate System where peak hour travel times meet expectations – **Urbanized Area B**	**55.0%**	*55.3%*	56.1%	**Yes** by achieving the 2-year target	*55.5%*	57.5%	**Yes** by achieving the 4-year target	Peak Hour Travel Times for Urbanized Area B
Percent of the non-Interstate NHS where peak hour travel times meet expectations – **Urbanized Area B**	**62.5%**	*63.1%*	62.9%	**Yes** by actual better than the baseline	*63.8%*	61.3%	**No**	
The Percent of the Interstate System Mileage providing for Reliable Truck Travel Times – **statewide**	**40.0%**	*40.0%*	40.0%	**Yes** by achieving the 2-year target	*38.5%*	37.7%	**No**	Freight Movement on the Interstate System
The Percent of the Interstate System Mileage Uncongested – **statewide**	**70.0%**	*70.5%*	70.5%	**Yes** by achieving the 2-year target	*72.0%*	71.3%	**Yes** by actual being better than the baseline	

In Table 10 above, the statewide target for the measure Percent of the Interstate System providing for Reliable Travel Times did not make significant progress for the 2-year target in FHWA's biennial determination in 2021. In this example, the State DOT would include, at a minimum, in its next Biennial Performance Report (*i.e.* Full Performance Period Progress Report in 2022) a description of the actions the State DOT will undertake to achieve its targets with respect to both Percent of the Interstate System providing for Reliable Travel Times and the Percent of the non-Interstate NHS providing for Reliable Travel Times measures. The FHWA strongly encourages State DOTs to add a description of their planned actions to their most recent Biennial Reports (*i.e.* 2020 Mid Performance Period Progress Reports) within 6 months of the FHWA significant progress determination to ensure that State DOTs take actions to achieve targets in a timely manner and to improve progress toward making significant progress for the applicable targets.

Also in Table 10, for the hypothetical "Urbanized Area A," the urbanized area target for the measure Percent of the non-Interstate NHS where peak hour travel times meet expectations did not make significant progress for the 4-year target in FHWA's biennial determination in 2023. In this example, the State DOT would include in its next Biennial Performance Report (*i.e.*, Mid Performance Period Progress Report in 2024) a description of the actions the State DOT will undertake to improve its performance with respect to both "Urbanized Area A's relevant measures: Percent of the non-Interstate NHS where peak hour travel times meet expectations and the Percent of the Interstate System where peak hour travel times meet expectations measures. In addition, this hypothetical State DOT did not make significant progress for the statewide target for the measure The Percent of the Interstate System Mileage providing for Reliable Truck Travel Times for the 4-year target in FHWA's determination in 2023. So the State DOT would, at a minimum, include in its next Biennial Performance Report (*i.e.* Mid Performance Period Progress Report in 2024) a description of the actions the State DOT will undertake to achieve targets with respect to both the Percent of the Interstate System Mileage providing for Reliable Truck Travel Times and the Percent of the Interstate System Mileage

Uncongested measures. The FHWA strongly encourages State DOTs to add a description of their planned actions to their most recent Biennial Reports (*i.e.* 2022 Full Performance Period Progress Reports) within 6 months of the FHWA significant progress determination to ensure that State DOTs take actions to achieve targets in a timely manner and to improve progress toward making significant progress for the applicable targets.

The FHWA believes that any one of the targets would impact other targets in the same measure group and that the State DOT's descriptions of the actions for all targets in a same measure group would be more logical and sensible in managing performance of relevant network rather than isolated description on a subset of the network. So, FHWA proposes that a State DOT would provide a description of the actions the State DOT will undertake to achieve all targets in the same measure group.

As indicated in the previous discussion in section 490.109, FHWA would make the significant progress determination each time the State DOT submits its Mid Performance Period Progress Report and its Full Performance Period Progress Report (every 2 years). In section 490.109(f)(2), FHWA proposes the consequences for not making significant progress for the NHFP measures in 490.105(c)(6). Pursuant to 23 U.S.C. 167(j), if a State DOT has not made significant progress toward the achievement of NHFP targets in a single FHWA biennial determination, then the State DOT must take the required actions in section 490.109(f)(2).

When a State DOT does not make significant progress toward the achievement of NHFP targets, it must include a description of the actions the State DOT will undertake to achieve the targets in its next Biennial Performance Report. This discussion must include:

- A description of the actions the State DOT will undertake to achieve targets including an identification of significant freight system trends, needs and issues within the State;
- a description of the freight policies and strategies that will guide the freight-related transportation investments of the State;
- an inventory of freight bottlenecks with the State and a description of the ways in which the State DOT is allocating national highway freight program funds to improve those bottlenecks; and
- a description of the actions the State DOT will undertake to meet the performance targets of the State.

For the purpose of the requirements in section 490.109(f)(2), the State DOT may reference the Statewide Freight Plan elements that identify freight system trends, needs and issues, as well as the freight policies and strategies in the Plan to guide investment. Under Section 150(e), State DOTs are already responsible for reporting on ways in which the State DOT is addressing freight bottlenecks, which are defined as those segments of the Interstates not meeting the threshold levels for congestion and average speed, as well as any other bottlenecks the State DOT wishes to include and anything that is identified in the National Freight Strategic Plan. The State DOT will provide an inventory of those segments as defined for section 150(e) and any other locations the State DOT wishes to reference as a bottleneck, as well as any bottleneck referenced in the National Freight Strategic Plan. Additionally, the State DOT will describe how funding is or will be allocated to improve freight fluidity through bottlenecks, as well as other actions to meet performance targets of the Interstates in the State.

In section 490.109(f)(3), FHWA proposes that State DOTs who fail to make significant progress for either the NHPP or NHFP should amend their Biennial Performance Reports within 6 months of FHWA's determination to include the actions they will take to achieve their targets. State DOTs are required to include description of the actions the State DOT will undertake to achieve targets in its next Biennial Performance Reports to meet the requirement in 23 U.S.C. 119(e)(7), as described in paragraph (f) of this section. State DOTs are encouraged to amend their most recent Biennial Performance Reports to include this information. As discussed in sections 490.107(b)(2)(ii)(F) and 490.107(b)(3)(ii)(E), all State DOTs are required to discuss the progress they have made toward the achievement of targets established for the NHPP and NHFP measures in each of their Biennial Performance Reports. The FHWA expects State DOTs would routinely monitor leading indicators, such as program delivery status and measured data, to assess if they are on track to make significant progress for their NHPP and NHFP targets and expects State DOTs to be aware of their progress prior to the time of each Biennial Performance Report. As described in the discussion of section 490.109(c), if a State DOT anticipates it may not make significant progress, it is encouraged to work with FHWA and seek technical assistance during the performance period to identify the actions that can be taken in a timely manner to improve progress toward making significant progress for the targets reported in subsequent Biennial Performance Reports. Thus, in section 490.109(f)(3), FHWA proposes that the State DOT should, within 6 months of the significant progress determination, amend its Biennial Performance Report to document the information specified in this section to ensure actions are being taken to achieve targets.

Discussion of Section 490.111 Incorporation by Reference

In the second performance measure NPRM, FHWA had proposed to incorporate the proposed HPMS Field Manual to codify the data requirements for measures and to be consistent with HPMS reporting requirements. In this NPRM, FHWA proposes to extend that incorporation to subparts E though G. This would codify the data requirements for these measures and ensure consistency with HPMS reporting requirements. The proposed HPMS Field Manual includes detailed information on technical procedures to be used as reference by those collecting and reporting data for the proposed measures. The proposed HPMS Field Manual is included in the docket.

2. Subpart E: National Performance Management Measures to Assess Performance of the National Highway System

In this section, FHWA describes the proposed provisions in Subpart E, which would establish performance measures to assess the performance of the NHS. The discussions of the proposed requirements are organized as follows:

- Section 490.501 discusses the purpose of the subpart;
- Section 490.503 describes the applicability of the subpart;
- Section 490.505 presents the definitions;
- Section 490.507 discusses the performance measures;
- Section 490.509 describes the data requirements;
- Section 490.511 identifies how to calculate performance metrics; and,
- Section 490.513 presents how to calculate performance measures.

Relationship Between Data Requirements, Calculation of Metrics, and Calculation of Measures

The following provides a general discussion of the relationship between data requirements, metrics, and measures. This relationship exists in this Subpart as well as Subparts F—H.

The proposed approach to determining individual measures includes data requirements, methods to calculate metrics, and methods to calculate measures. These are presented in sections 409.509, 490.511, and 409.513, respectively, and in similar sections in Subparts F—H. This proposed approach is presented as follows:

- Data Requirements—Outlines the data necessary to determine the required set of metrics that would be used to calculate the relevant measures. The type of data to be collected, the methods of data collection, and the extent and frequency of collection are described below and in the appropriate sections.
- Metrics—Describes the values that would be calculated from the data collected to support measure development and how to report the individual metrics.
- Measures—Provides the method to calculate the measures using reported metrics. State DOTs would use the calculated measures to report baseline condition or performance, establish targets, and report on progress.

Discussion of Section 490.501 Purpose

The FHWA is required, under 23 U.S.C. 150(c), to establish performance measures for State DOTs to use to assess the performance of the Interstate System and of the non-Interstate NHS. In this Subpart, FHWA proposes to establish two measures (1) a travel time reliability measure and (2) a peak hour travel time measure.

Discussion of Section 490.503 Applicability

The FHWA is proposing to establish a travel time reliability measure to apply to the entire NHS, including Interstate System and non-Interstate NHS elements. This measure would compare the longest travel time or slowest speed that occurs during a specified time frame to a reference travel time or speed for a transportation facility. A reliability measure is an indication of the extra time travelers must add to their trips in order to have a high degree of certainty that they will arrive at their destination on time. The FHWA has defined travel time reliability as the variability of travel times. Reliability, in the eyes of transportation system users, reflects how consistent a travel time is on portions of the NHS they are traveling on. The larger the variability of travel times is from day-to-day or hour-to-hour, the more the user has to plan for unexpectedly long travel times when planning a trip. For instance, to make sure a traveler arrives at the airport in time for a flight, the traveler may allot extra travel time to ensure that he/she arrives in time in case of traffic incident, bad weather, or road construction along the way.

In more mathematical terms, reliability looks at the longer (all travelers) or longest (freight) travel times faced by users on portions of the NHS and compares these times to what is typically experienced by the system user (normal travel time). The larger the difference in these travel times, the worse the reliability is. In order to improve reliability, State DOTs and MPOs can implement operational and other strategies that are specifically designed make the system more reliable and efficient.

The reliability measure proposed in this NPRM would be reported as a Percent of the Interstate System providing reliable travel times and as the Percent of the Non-Interstate NHS providing reliable travel times. What that really means is that the number of miles on the Interstate or Non-Interstate NHS that performed in a reliable manner will be those miles where the travel time during any time period of the "daylight" hours (6 a.m. to 8 p.m.), 7 days a week, did not surpass the normal travel time by more 50 percent. The time periods during "daylight" hours include: 6 a.m. to 10 a.m. weekdays, 10 a.m. to 4 p.m. weekdays, 4 p.m. to 8 p.m. weekdays, and weekend days 6 a.m. to 8 p.m. If the longer travel times exceed the normal travel time by 50 percent or more in any of these time periods, then that section of road is considered unreliable. The FHWA experience and analysis led to the proposed threshold of 1.5, which reflects 50 percent longer travel times. The FHWA seeks comments on whether the 1.5 threshold is appropriate.

The calculations (or metrics) used to report this measure report the travel time reliability for every road segment on the NHS, so it will be readily apparent to State DOTs, MPOs, and the general public where the NHS road segments are that have a reliability problem.

The FHWA also notes two important refinements that strengthen travel time reliability measures: (1) Some operating agencies currently exclude the top 20 percent of longest travel times throughout the year when developing reliability-related measures because these travel times typically are due to extreme events that are beyond an agency's control and should not be considered in the assessment of overall system performance; and (2) the reference travel time used in a reliability measure often reflects travel time associated with typical or average travel speeds rather than the time associated with free flow travel speeds.

By establishing targets for, and reporting on this measure, State DOTs and MPOs can better identify and manage portions of the NHS where users experience unreliable travel. Note that FHWA is proposing a phase-in for the establishment of targets for the non-Interstate NHS reliability measure which is outlined in more detail under the discussion for section 490.105(e)(7).

The FHWA is proposing to establish a peak hour travel time measure to apply to the NHS, including Interstate System and non-Interstate NHS, within urbanized areas with a population over 1 million. By establishing targets for, and reporting on this measure, State DOTs and MPOs can better identify and manage portions of the NHS in major urbanized areas regardless of roadway ownership. As proposed, FHWA expects State DOTs and MPOs to use this measure to report one outcome for each of the applicable urbanized areas, even in cases where the boundary of the urbanized area intersects multiple States and metropolitan planning areas.

Discussion of Section 490.505 Definitions

The FHWA is proposing to define *Desired Peak Period Travel Time* as the travel time during 3 morning peak hours and the 3 evening peak hours, for each reporting segment in urbanized areas with a population over 1 million. State DOTs shall coordinate with MPOs when establishing the Desired Peak Period Travel Time. A State DOT and MPO(s) must use the same Desired Peak Period Travel Time for a particular reporting segment for the purposes of calculating the metrics and measures. The Desired Peak Period Travel Time should represent a travel time that is consistent with the intended plan and design of the roadway as part of a complete transportation system. The Desired Peak Period Travel Time should be developed in consultation with operating agencies as well. An operating agency is the agency or agencies that actually operate the NHS roadways at the most local level—this could be a State DOT, MPO, or a local (city, town, county) transportation agency. Operating means applying operational strategies in the day to day management of the NHS roadways; strategies such as posting travel times, sending out freeway service patrols, altering signal timing, and other items that could improve the efficiency and reliability of the NHS. The Desired Peak Period Travel Time will be used to calculate the Peak Hour measure which assesses peak hour travel and should represent a travel time that is consistent with the intended plan and design of the roadway as a part of a complete transportation system.

The FHWA is proposing to define *Level of Travel Time Reliability* (LOTTR) as a comparison, expressed as a ratio, of the 80th percentile travel time of a reporting segment to the "normal" (50th percentile) travel time of a reporting segment occurring throughout a full calendar year. The 80th percentile travel time reflects the longer travel times to make a trip. The FHWA chose the 80th percentile travel time because it reflects the travel time where operational strategies can make the most impact on improving reliability. The closer the 80th percentile travel time is to the normal (50th percentile) travel time, the better the reliability. The FHWA seeks comments on this methodology.

The FHWA is proposing to define *Normal Travel Time* as the time expected of Interstate System and non-Interstate NHS roadway users to travel when the system is predominantly in use. This time is proposed to be defined as the 50th percentile travel time occurring during this defined time period. The 50th percentile relates to the travel time that occurs in the middle of a distribution of all travel times for that travel time segment during that time period over a 1-year reporting period. The FHWA selected the 50th percentile as "normal travel" because it represents the "normal" experiences of travelers, rather than free flow travel (which would typically be a lower percentile, such as the 20th).

The FHWA is proposing to define *Peak Hour Travel Time* as the hour that contains the longest annual average travel time during the peak period of each non-holiday weekday. The peak period is made up of the hours of the day where the most people typically commute, or the hours with the highest amount of travel and include: Morning (6:00 a.m. to 7:00 a.m.; 7:00 a.m. to 8:00 a.m.; and 8:00 a.m. to 9:00 a.m.) and afternoon (4:00 p.m. to 5:00 p.m.; 5:00 p.m. to 6:00 p.m.; and 6:00 p.m. to 7:00 p.m.). This definition is needed as the peak period would be used as the time frame to develop the Peak Hour Travel Time Ratio metric.

The FHWA is proposing to define *Peak Hour Travel Time Ratio* as the ratio between the longest peak hour travel time and the Desired Peak Period Travel Time. The closer the ratio is to 1.0, the more the actual peak hour travel time reflects the desired peak period travel time.

A *Travel Time Cumulative Probability Distribution* is the approach State DOTs and MPOs would use to determine percentiles needed for the travel time reliability measure. A travel time cumulative probability distribution is a representation of all the travel times for a road segment during a defined reporting period (such as annually) presented in a percentile ranked order (see Table 11 below for an example). In a graphic representation, as shown in the lower graph in Figure 8, the x-axis is the span of travel times (from shortest to longest) and the y-axis is the probability that a travel time will occur at or slower than the travel time on the x-axis. The upper graph in Figure 8 shows the travel time distribution, with travel time on the x-axis and the number of occurrences over a year on the y-axis. In a graphic representation of a cumulative probability distribution, the variability in travel time is indicated by the difference between the upper and lower bounds of travel times on a given travel time segment. For purposes of this subpart, FHWA is proposing that the upper and lower bounds be identified as the 80th and 50th percentile travel times respectively, as illustrated in the lower graph in Figure 8. Travel time variability will reduce as the difference between the upper and lower bounds decreases or as the slope of the cumulative probability distribution curve increases.

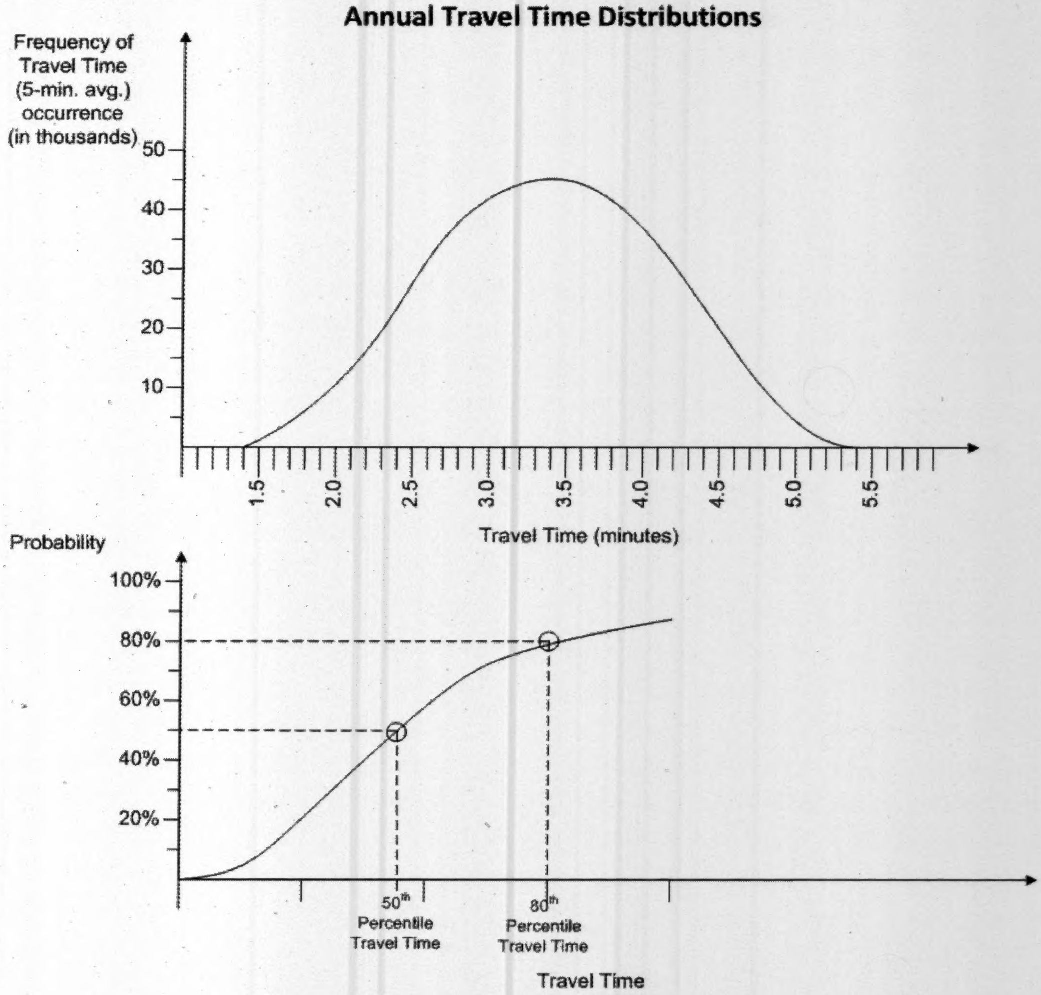

Figure 8 – An Example of Annual Travel Time Distributions: Frequency of Travel Times vs. Cumulative Probability of Each Travel Time for a Segment

TABLE 11—EXAMPLE TRAVEL TIME DISTRIBUTION SHOWING PERCENTILES

Example travel time distribution		
Rank (shortest to longest)	Travel time on road segment (seconds)	Percentiles
1	20	
2	20	
3	20	
4	21	
5	21	
6	22	
7	22	
8	22	
9	22	
10	23	50th
11	24	
12	24	
13	24	
14	25	
15	27	
16	27	80th
17	29	
18	33	
19	40	
20	44	

Please note that Table 11 is a simple illustration of obtaining 50th and 80th percentile values in a hypothetical dataset with 20 travel time entries. Within Table 11, the 50th percentile is calculated by multiplying the total number of travel time entries (20) by 0.5 resulting in "10." So the tenth entry in the table would be the 50th percentile travel time (23 seconds). The same approach would be used with the 80th percentile calculation: 20 travel time entries × 0.8 = 16 so the 16th entry is the 80th percentile travel time (27 seconds). Please see section 490.511 for the specifics on the proposed metrics for Travel Time Reliability and Peak Hour Travel Time measures.

Discussion of Section 490.507 National Performance Management Measures To Assess Performance of the NHS

The FHWA is proposing in section 490.507 the establishment of four measures to be used to assess the performance of the Interstate System and non-Interstate NHS. The first two measures, which are focused on travel time reliability, are applicable to all NHS roadways in the State. The next two measures, focused on peak hour travel time, are applicable to all NHS roadways within urbanized areas with a population greater than 1 million. A total of four measures are proposed:

Travel Time Reliability:

- Percent of the Interstate System providing for Reliable travel times
- Percent of the non-Interstate NHS providing for Reliable travel times

Peak Hour Travel Time:

- Percent of the Interstate System in large urbanized areas over 1 million in population where peak hour travel times meet expectations
- Percent of the non-Interstate NHS in large urbanized areas over 1 million in population where peak hour travel times meet expectations.

State DOTs and MPOs would need to establish targets for each of these measures in accordance with section 490.105. These measures would be calculated using the metrics proposed in section 490.511 following the methods proposed in section 490.513. The data to support the measures are proposed in section 490.509. The proposed travel time reliability measures are designed to be used by State DOTs and MPOs to better understand the scope of reliability problems on their highway systems and to aid in identifying and implementing strategies to improve system performance. These measures are intended to quantify the variability in travel times experienced by users of the highway system during hours of the day when the predominant travel occurs on the system. In general, the variability captured by the proposed measures would be a comparison of some of the longer travel times experienced by users compared to the amount of time users typically expect their travel to take. This comparison is an indication of how reliable the highway system is, in terms of how close actual travel times are to what is expected by users.

Based on research the FHWA has been doing for the past several years, it believes that measuring the reliability of travel times is a key to operating the system more efficiently and reliably.[91]

The FHWA also heard from a wide range of stakeholders that travel time reliability is important and should be considered in this rulemaking. In addition, many stakeholders expressed a desire for a reliability measure to capture longer than normal travel times that would occur as a result of non-recurring congestion, such as traffic incidents, work zones, and special events, which can be managed by operating agencies through improved traffic flow.

The proposed peak hour travel time measures are designed to be used by State DOTs and MPOs in urbanized areas over 1 million in population to better understand the scope of undesirable congestion problems in these large urbanized areas and to identify and implement strategies to improve system performance in these areas. The measures are designed to compare the longest average time of travel experienced by users during peak hours of the day to the travel time desired for the system. The FHWA is proposing in section 490.511(c)(1) that the State DOT, in coordination with MPOs, establish a desired time of travel for sections of their highway system that would be consistent with its intended use and design. The proposed measure would represent the percentage of the applicable highway network where actual travel times experienced during peak hours meets the expectations of the State DOT and MPOs. The FHWA is proposing that peak hour travel times that meet expectations would be those conditions where actual travel times are less than 50 percent greater than what is desired for the highway.

The FHWA heard concerns from many stakeholders regarding the effectiveness of the establishment of measures that would utilize an absolute speed or travel time as a reference to assess NHS performance. Many felt that some portions of the new expanded NHS highway network may be functioning as intended even when traffic is not flowing freely. Considering this, FHWA is proposing an approach where State DOTs, in coordination with MPOs, would establish Desired Peak Period Travel Times (as times that are desired for the reporting segment) to be used as the basis for the peak hour measures. The Desired Peak Hour Period Travel Time would reflect the policies and management approach for the urbanized areas. In addition, as discussed in section 490.105(e)(8), FHWA is proposing that the peak hour travel time measures would only be applicable to NHS highways in urbanized areas where populations are greater than 1 million. For these measures, one single target would be established and reported for each applicable urbanized area, where collectively all State DOTs and MPOs in these areas would need to agree on the single target even where the urbanized area intersects with multiple jurisdictional boundaries. In total, based on the 2010 U.S. Census, 42 targets would be established nationwide using this measure—one for each urbanized area where populations are greater than 1 million. This approach is being proposed so that State DOTs and MPOs can work collectively to address highway performance problems that cross geographic boundaries and impact the ability to improve system performance throughout the urbanized area.

Discussion of Section 490.509 Data Requirements

The FHWA is proposing for State DOTs and MPOs to use a travel time data set that would meet the requirements discussed in section 490.103 of this rulemaking to calculate the metrics defined in section 490.511. State DOTs and MPOs would use the same travel time data set to assess the performance of the directional mainline highways of the NHS.

The FHWA is proposing State DOTs, in coordination with MPOs, establish and submit reporting segments as discussed in section 490.103 of this rulemaking. These reporting segments would be used as the basis for calculating and reporting metrics to the FHWA and for State DOTs and MPOs to calculate the measures proposed in this subpart to assess Interstate System and non-Interstate NHS performance. Reporting segments, as defined in 490.101, include one or more travel time segments and must be contiguous so that they cover the full extent of the mainline highways of the NHS in the State. The section 490.103 discussion included in this rulemaking provides more information on the proposal for State DOTs to define and submit reporting segments.

The FHWA is proposing in this section that State DOTs would use the posted speed limits of roadways to estimate travel times for calculating the Reliability metrics when the data is missing or represented as a time of "0" or null in the Travel Time Data Set. The proposed use of the posted speed data is discussed in section 490.511. The FHWA is not proposing that posted speed limit data be reported as part of this rulemaking.

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[91] Urban Congestion Report Program (*http://www.ops.fhwa.dot.gov/perf_measurement/ucr/index.htm*) Urban Congestion Trend and "Traffic Congestion and Reliability" reports (*http://www.ops.fhwa.dot.gov/perf_measurement/reliability_reports.htm*) Travel Time Reliability Overview Brochure and Guidance Document (*http://www.ops.fhwa.dot.gov/perf_measurement/reliability_measures/index.htm*) SHRP 2 Reliability Program (esp. L03) Lessons Learned: Monitoring Highway Congestion and Reliability Using Archived Traffic Detector Data (*http://www.ops.fhwa.dot.gov/publications/lessons_learned/index.htm*) Monitoring Urban Freeways in 2003 (*http://d2dtl5nnlpfr0r.cloudfront.net/tti.tamu.edu/documents/FHWA-HOP-05-018.pdf*).

The areas that would be applicable to the Peak Hour Travel Time measure would be identified when the State DOT Baseline Performance Period Report is due to FHWA, based on the urbanized area boundaries at that time. These areas would continue to be applicable to the measure (or conversely "not applicable") for the duration of the performance period regardless of population changes that may occur during the performance period. The FHWA is proposing that the applicability of the area be determined using the most recent U.S. Decennial Census reports on area populations. At the time of this rulemaking, the Peak Hour Travel Time measure would be applicable to 42 urbanized areas in the United States.

Discussion of Section 490.511 Calculation of System Performance Metrics

The FHWA is proposing that two metrics need to be calculated to develop the Travel Time Reliability and Peak Hour Travel Time measures proposed in this rulemaking. They are the LOTTR metric and the Peak Hour Travel Time Ratio (PHTTR) metric. State DOTs would be required to calculate these metrics for all applicable roadway segments for the applicable time periods and report them to FHWA annually. The proposed approach to calculate and report these metrics is discussed in this section.

As proposed in section 490.511(b), the LOTTR metric would be calculated annually by the State DOT for all reporting segments on the NHS in the State and used by FHWA, State DOTs, and MPOs to assess the performance of the system. The source of data would be the Travel Time Data Set. The FHWA is proposing that 5 minute travel time bins that do not have data reported, or are reported as null, or "0" in the Travel Time Data Set would be replaced with a calculation of the travel time needed to fully traverse the travel time segment while traveling at the posted speed limit. This will ensure that a complete set of travel times for the time periods throughout the day needed to calculate the LOTTR metric are utilized. The FHWA believes that, in order to calculate an accurate assessment of reliability, travel times throughout the day are necessary to capture the variability of travel times on the system. The FHWA is proposing that in cases where travel times are not recorded, typically due to a lack of probe sources, it is assumed that vehicles are travelling at the posted speed limit. The FHWA believes that this assumption is valid since a lack of vehicles present during a 5 minute interval on a roadway segment generally indicates uncongested conditions. The FHWA believes that as technologies improve and the percentage of vehicles containing equipment capable of communicating with vehicle probes increases, the potential for missing data will decrease over time. Considering the possibility for travel times to be missing during different time intervals of the day and the need for a complete data set to accurately calculate the reliability metric, FHWA encourages comments from the public on this proposed approach and/or alternative approaches that could be used reliably as part of a national performance program.

The FHWA is proposing that the LOTTR metric is based on the variability of travel times over a full year during following time periods: Weekdays 6:00 a.m. to 10:00 a.m.; 10:00 a.m. to 4:00 p.m.; 4:00 to 8:00 p.m.; and weekend days 6:00 a.m. to 8:00 p.m. The FHWA selected these time periods to cover peak hours and other times of day the system may be used the most. It is FHWA's desire to have the Travel Time Reliability metric reflect the level of consistency in travel times during hours of the day when the majority of highway use occurs. In addition, by using these smaller time periods, State DOTs and MPOs may better understand reliability issues during varying travel periods throughout the week (*i.e.,* peak periods, weekday mid-day, and weekends) and implement effective operational strategies. Evaluating the defined time periods would remove the times of day when travel is typically uncongested due to the lack of vehicle use. The proposed time periods for the LOTTR metric covers 14 hours of each day resulting in 168 average travel time values for each reporting segment (stored in each 5 minute bin), either directly measured from probes or using the calculated travel time at posted speed limit as discussed above. The FHWA is proposing that the LOTTR metric be based on a full calendar year of data which would require the analysis of up to 61,488 travel time values for each reporting segment.[92] Analyzing this volume of data for each reporting segment will be simpler for the State DOTs and MPOs if they use an automated spreadsheet or other software product that features a "percentile" function. This function can be used to generate the 50th percentile or "normal time" (a shorter travel time) and the 80th percentile travel time (a longer travel time) that are being proposed to calculate the metric. The FHWA is proposing the use of the 80th percentile travel time because it is generally accepted as the upper bound of travel times that transportation agencies can plausibly manage using available resources; travel times beyond this point are acknowledged to occur during unique traffic incidents that are outside the control of a transportation agency.[93] The FHWA is proposing the use of the 50th percentile travel time to represent the "normal" or expected time of travel during hours of the day when the highway is predominantly used.

The FHWA reviewed other options for the denominator in the LOTTR metric and determined that the 50th percentile, more so than either the 20th percentile or average travel time, more accurately reflected the expected time. Use of the 50th percentile, along with the 80th percentile, travel time, shows the variability in travel times that operational strategies can positively affect in helping to improve travel time reliability.

In general, the proposed calculation is made by ranking, from the shortest travel time to the longest, all the travel time values in each reporting segment for each time period (weekdays 6 a.m. to 10 a.m.; 10 a.m. to 4 p.m.; and 4 p.m. to 8 p.m. and weekends 6 a.m.to 8 p.m.) every day from January 1st through December 31st and identifying the 50th and 80th percentile travel times in this series for each time period. An example is contained in Table 11. The FHWA is proposing that the LOTTR metric would be calculated by developing a ratio that compares the 80th percentile travel time to the normal (50th percentile) travel time as shown in the following equation.

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[92] Estimate based on multiplying 168 travel time values per day by 366 days in the longest year that could occur.

[93] SHRP 2 Project L03: *http://onlinepubs.trb.org/onlinepubs/shrp2/SHRP2_S2-L03-RR-1.pdf.*

$$\text{LOTTR} = \frac{\text{80th percentile travel time}}{\text{50th percentile "normal travel time"}}$$

The resulting LOTTR metrics (one for each time period) would be rounded to the nearest hundredth decimal place and calculated for every NHS reporting segment within the State. The LOTTR values for each of the four time periods would be reported for the relevant reporting segment. The FHWA believes that the comparison of the 80th and 50th percentiles of the travel times occurring during the time periods identified, the most typical travel times, will reflect the reliability of the system as perceived by most highway users. The FHWA encourages comments from the public on the use of time periods to develop the LOTTR metric, as well as the number and length of the time periods proposed.

In section 490.511(c), FHWA is proposing that the PHTTR metric would be calculated by State DOTs for all NHS mileage within urbanized areas with a population over 1 million using average peak hour travel times derived from the Travel Time Data Set. The proposed metric is a comparison of the longest average hourly travel time, referred to in this rulemaking as the "peak hour travel time," to the travel time desired by the State DOT and MPO for the reporting segment. The FHWA is not proposing to address missing data for this metric as:

- The metric is focused on travel occurring during only peak hours of the day when it may not be correct to assume free flowing conditions when data are missing; and
- the metric is computed using hourly average travel times that can be determined even if there are missing 5 minute travel time bins within the one hour time period.

The FHWA also proposes that, for this metric, any 5 minute bin travel times that represent travel speeds below 2 mph or above 100 mph be excluded from the metric calculation to remove outliers that may negatively affect the metric. The FHWA encourages comments on these approaches and invites suggestions on alternatives that could be considered that may be more effective.

In this rulemaking, FHWA is proposing that the peak period of travel will occur between 6:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 7:00 p.m. on non-holiday weekdays. The six 1-hour time blocks within these periods are referred to as the "peak period" in this rulemaking. The FHWA proposes a 2-step process of determining the peak hour of travel time for calculating the PHTTR metric for a reporting segment. As the first step, the annual average travel time for each of the six hourly blocks in the peak period (6:00 a.m. to 7:00 a.m.; 7:00 a.m. to 8:00 a.m.; 8:00 a.m. to 9:00 a.m.; 4:00 p.m. to 5:00 p.m.; 5:00 p.m. to 6:00 p.m.; and 6:00 p.m. to 7:00 p.m.) would be calculated separately for a reporting segment. For calculating those six annual averages, measured travel times on non-holiday weekdays over a full calendar year would be used. As the second step, the highest numeric value, or longest time, of the annual average travel time among the hours in the peak period would be selected as the peak hour travel time for calculating the PHTTR metric for the reporting segment and that hour would be referred to as the "peak hour" for metric and measure development purposes. For example, if annual average peak hour travel times across a reporting segment were as follows: 6:00 a.m. to 7:00 a.m.: 125 seconds; 7:00 a.m. to 8:00 a.m.: 196 seconds; 8:00 a.m. to 9:00 a.m.: 120 seconds; 4:00 p.m. to 5:00 p.m.: 105 seconds; 5:00 p.m. to 6:00 p.m.: 105 seconds; 6:00 p.m. to 7:00 p.m.: 108 seconds, then the 7:00 a.m. to 8:00 a.m. period with an average annual hourly travel time of 196 seconds would be selected as the peak hour and used to calculate the PHTTR.

This proposed process is illustrated in the equation below:

$$Peak\ Hour\ Travel\ Time = Max_{i=1}^{i=6}\left\{\left(\frac{\sum_{j=1}^{T}\sum_{k=1}^{12} Travel\ Time_{k,j,i}}{T \times 12}\right)\right\}$$

Where:

- Max = longest average travel time of the six peak hours
- i = "peak hours" (each hour between 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.)
- j = day of the year
- T = total number of days in the year
- k = 5 minute bin
- $Travel\ Time_{k,j,i}$ = vehicle travel time, to the nearest second, for the reporting segment recorded or estimated during 5 minute bin "k," on day "j," during the peak hour "i"
- Peak Hour Travel Time = the highest recorded annual average travel time, to the nearest second, occurring throughout the year during the "peak hours."

The FHWA is proposing that State DOTs, in coordination with MPOs, establish Desired Peak Period Travel Times for each reporting segment, based on their operational policies for NHS roadways. The FHWA recommends that these Desired Peak Period Travel Times also be developed in consultation with operating agencies. For each reporting segment, State DOTs would need to report a single "Desired Peak Period Travel Time" for the morning hours in the peak period and a single "Desired Peak Period Travel Time" for the afternoon hours in the peak period when reporting segments are submitted to FHWA as proposed in section 490.103(f). As proposed, State DOTs would only be allowed to modify the Desired Peak Period Travel Time if the reporting segment lengths change during a performance period. The FHWA anticipates that State DOTs will work with MPOs, in consultation with applicable operating agencies, to develop polices (*i.e.*, desired travel at posted speed limits) that would determine how the desired level would be established. Under this proposed approach, FHWA does not plan to approve or judge the Desired Peak Period Travel time levels or the policies that will lead to the establishment of these levels.

The FHWA is proposing that the PHTTR ratio is a comparison of the Peak Hour Travel Time to the Desired Peak Period Travel Time for each reporting segment and calculated as illustrated in the following equation:

$$\text{PHTTR} = \frac{\text{Peak Hour Travel Time}}{\text{Desired Peak Period Travel Time}}$$

Where:

- Peak Hour Travel Time = the longest recorded average annual travel time, to the nearest second, occurring throughout the year during the "peak hour;"
- Desired Peak Period Travel Time = the desired travel time, to the nearest second, in the peak period, either morning or afternoon, that corresponds to the hour in which the Peak Hour Travel Time occurred;
- PHTTR = Peak Hour Travel Time Ratio for the reporting segment to the nearest hundredth.

In section 490.511(d), FHWA is proposing for State DOTs to report annually the LOTTR and PHTTR metrics for each applicable reporting segment on the NHS. State DOTs would report these metrics in HPMS no later than June 15th of the following year (*i.e.*, metrics for calendar year 2017 would be reported no later than June 15, 2018). Specifically, FHWA is proposing that State DOTs would report annually the following to the HPMS for each reporting segment:

- NPMRDS TMC codes (or related reporting segments made up of multiple Travel Time Segments) or standard HPMS location referencing;
- LOTTR metrics for each of the four time periods, to the nearest hundredth;
- 80th percentile, travel times for each of the four time periods to the nearest second;
- 50th percentile, travel times for each of the four time periods to the nearest second;
- PHTTR metric, to the nearest hundredth;
- Peak Hour Travel Time, to the nearest second; and
- the Hour (6 a.m., 7 a.m., 8 a.m., 4 p.m., 5 p.m., or 6 p.m.)

The FHWA intends to issue additional guidance on how State DOTs could report these data to HPMS. The FHWA recognizes the burden associated with the efforts needed to conflate (or relate) travel time reporting segments (NPMRDS data locations) to locations on a defined roadway network (State GIS-based locations). For this reason, FHWA is not proposing a requirement for State DOTs to conflate the travel time reporting segments to the HPMS roadway network. The FHWA intends to conduct this conflation.

Discussion of Section 490.513 Calculation of System Performance Measures

The FHWA is proposing section 490.513 to establish a method that can be used by State DOTs, MPOs, and FHWA to calculate the performance measures proposed in section 490.507. These system performance measures are based on the performance metrics proposed in section 490.511 Calculation of System Performance Metric(s). The FHWA expects that State DOTs and MPOs will use the methods proposed in this section to assess and report on the performance of the system. The FHWA proposes to use this calculation method to report on performance at a national level and to carry out its evaluation of the progress made by State DOTs to achieve their NHPP targets.

The proposed calculation method would be used to determine the percentage of the system, by length, operating at a specified level of performance. The general format for this calculation is illustrated in the equation below:

$$Measure = 100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where:

- i = reporting segment
- R = total number of reporting segments operating at a specified performance level, as defined through a threshold proposed for each metric
- T = total number of reporting segments in the system and area applicable to the measure
- SL_i = length of the reporting segment, to the nearest thousandth of a mile
- Measure = the percentage of the system operating at a specified performance level (operating below the metric threshold).

The FHWA is proposing the level that represents reliable travel to highway users is a LOTTR of 1.50. This LOTTR level represents an operating level where 80 percent of the travel times observed on a roadway segment is less than 50 percent more than what is observed normally (defined as the 50th percentile travel time for this rulemaking). The LOTTR is a ratio, so a 1.0 would mean that the 80th and 50th percentile travel times were the same. A 1.50 or above LOTTR means that the 80th percentile travel time is 50 percent longer than the 50th percentile travel time and represents less than acceptable travel time reliability. In general, this operating level of reliability represents conditions where the amount of time to travel on an NHS highway is up to 50 percent longer than what users would have expected. The FHWA also considered a threshold of 2.0, or twice the normal travel time, but determined that these travel times would be longer than most system users would consider reliable. The FHWA ultimately chose the 1.5 threshold understanding that there will be some variability in travel time that may be beyond the ability of operating agencies to affect. While any LOTTR above 1.00 would indicate some variability in travel time, it is the variability that is 50 percent more than the normal time that is being addressed with this measure and that has the ability to be addressed through operational and other strategy implementation. The FHWA encourages comments from the public on the proposed LOTTR threshold level of 1.50 and if it is at the appropriate level to indicate unreliable performance.

The FHWA is proposing that a PHTTR threshold level of 1.50 represents peak hour travel times that meet expectations of State DOTs, MPOs, and local operating agencies. This PHTTR level represents a condition where observed (or estimated) travel times in large urbanized areas are no more than 50 percent higher than what would be desired for the roadway, as identified by the State DOT and MPO. The PHTTR is a ratio where 1.0 would mean that that the actual peak hour travel time would equal to the Desired Peak Period Travel Time. So a PHTTR of 1.5 represents an actual peak hour travel time that is 50 percent higher than the Desired Peak Period Travel Time. The FHWA feels that a PHTTR level of 1.50 or higher indicates a roadway is no longer meeting its intended purpose, as desired by local needs, to move traffic through the system. The FHWA encourages comments from the public on the proposed PHTTR threshold level of 1.50 and if it is at the appropriate level to indicate that peak hour travel time performance meets expectations.

Both of these measures use the same threshold—1.50. The FHWA believes that highway users and operating agencies begin to consider the system to not meet expectations when trips take 50 percent longer than what they would normally expect. For example, highway users would become frustrated with the system when a trip that is expected to take 30 minutes ends up taking 45 minutes or longer.

For the reliability measure, FHWA evaluated the impact of different threshold values ranging from 1.2 to 2.0 on reliability of the Interstate System in five States that varied in size and population. This evaluation showed minimal sensitivity to changes in reliability when the reliability threshold was above 1.6 and a sharp drop off in reliability when the threshold was below 1.3. The FHWA's proposed threshold value of 1.50 resulted in reliability levels that appeared to be reasonable as a level that could be used to manage performance.

A summary of the criteria described previously for the proposed performance measures, including the measure, the metric, and transportation network or geographic area the measure would apply to, is provided in Table 12 below:

TABLE 12—SUMMARY OF PROPOSED PERFORMANCE MEASURE CRITERIA

Measure	Metric & threshold	Applicable transportation network/geographic area
490.507(a)(1): Percent of the Interstate System providing for reliable travel times (calculation proposed in 490.513(b)).	LOTTR < 1.50	• Interstate System.
490.507(a)(2): Percent of the non-Interstate NHS providing for reliable travel times (calculation proposed in 490.513(c)).	LOTTR < 1.50	• Non-Interstate NHS.
490.507(b)(1): Percent of the Interstate System where peak hour travel times meet expectations (calculation proposed in 490.513(d)).	PHTTR < 1.50	• Interstate System in each urbanized area † with a population >1 M.
490.507(b)(2): Percent of the non-Interstate NHS where peak hour travel times meet expectations (calculation proposed in 490.513(e)).	PHTTR < 1.50	• Non-Interstate NHS in each urbanized area † with a population >1 M.

† One measure would be calculated for each urbanized area, including those urbanized areas that intersect with multiple State and metropolitan planning area boundaries.

3. Subpart F: National Performance Management Measures To Assess Freight Movement on the Interstate System

In this sub-section, FHWA describes the proposed requirements in Subpart F, which would establish performance measures to assess freight movement on the Interstate System. The discussions of the proposed requirements are organized as follows:

- Section 490.601 discusses the purpose of the subpart;
- Section 490.603 describes the applicability of the subpart;
- Section 490.605 presents the definitions;
- Section 490.607 discusses the performance measures;
- Section 490.609 describes the data requirements;
- Section 490.611 identifies how to calculate performance metrics; and,
- Section 490.613 presents how to calculate performance measures.

Discussion of Section 490.601 Purpose

The FHWA is required, under 23 U.S.C. 150(c), to establish performance measures for State DOTs to use to assess the performance of freight movement on the Interstate System. The FHWA proposes to establish in this subpart a travel time reliability measure and a congestion measure for State DOTs and MPOs to use to assess freight movement on the Interstate System.

Discussion of Section 490.603 Applicability

As required by 23 U.S.C. 150(c)(6), FHWA proposes that the freight performance measures will apply to freight movement on the Interstate System.

Discussion of Section 490.605 Definitions

The FHWA proposes to define *Normal Travel Time* for freight performance in the same manner as defined for system performance in section 490.603 as the time expected of Interstate System roadway users to travel when the system is predominantly in use. This time is proposed to be defined as the 50th percentile travel time occurring during this period of use. The 50th percentile relates to the travel time that occurs in the middle of a distribution of all travel times for that travel time segment over a 1-year reporting period. The FHWA selected the 50th percentile as "normal travel" because it is the mid-point of all reported travel time and is more likely to provide an accurate estimate of the typical travel time that best serves as the travel time, or denominator, by which to compare the highest travel times. The 50th percentile was chosen to represent the *Normal Travel Time* because it has been used in previous FHWA performance measure research and analysis to represent a speed at which a vehicle is traveling without impediments or congestion. This previous FHWA research and analyses confirmed that this is an appropriate threshold. The FHWA considered other options, including the 20th percentile and average speed. After analysis of these options, the 50th percentile compared to the 95th percentile appeared to provide the most meaningful representation of delay for the purpose of this rule.

Discussion of Section 490.607 National Performance Management Measures To Assess Freight Movement on the Interstate System

Slow or unreliable truck travel times are a cause of diminished productivity for drivers and equipment; they reduce the efficiency of operations, increase the cost of goods, increase fuel costs, and reduce drivers' available hours for service. Considering these potential impacts and the input received from public and private sector freight stakeholders, FHWA is proposing measures in this subpart that would focus on both the speed of truck travel and the time reliability for truck travel. The FHWA identifies these measures as complimentary in illustrating congestion and performance of the Interstate System. The FHWA believes that State DOTs and MPOs, by using both of these measures, can assess and evaluate areas where freight-movement problems are occurring on the Interstate System by looking at the entire Interstate System within their boundaries, as well as specific isolated areas where delays typically occur. The two measures proposed are: (1) Percent of the Interstate System providing for Reliable Truck Travel Times; and (2) Percent of the Interstate System Uncongested.

The first proposed measure (Percent of the Interstate System providing for Reliable Truck Travel Times) is based on the concept of using a metric that is an index to assess the "extra budgeted time" needed to assure an on-time arrival. This concept, used by many transportation operating agencies today to assess and manage system operations, considers the variability in operating travel times as an indicator of trip time planning needs. In general, highways that are operating with higher travel time variability would require extra time to be budgeted to assure an on-time arrival of trips. This metric can be used as a management tool to identify the strategies that, when implemented effectively, would minimize the need for travelers to have to budget "extra time" into their trip planning.

The efficient use of resources to move goods across the country is particularly critical for freight operations on the Interstate System. For this reason, the reliability measure proposed in this subpart is designed to support freight trip planning needs where a high level of certainty is needed to assure on time arrivals for trips occurring at all hours throughout the year. Shippers, carriers, and receivers desire on-time or just-in-time delivery of goods and plan their trips by building in enough time to be on time. To do this, they consider the longest travel times of a route by looking at the distribution of travel times, which equates to the 95th percentile or higher. They typically budget their trip time at the 95th percentile travel time level. This assures their customers that aside from an extreme traffic event, they will be on time. However, the freight industry will consider the reliability ratio of the worst travel times to normal travel times in route planning and desire for there to be a low ratio meaning that there is little difference between the normal travel time and the worst travel times. They will reroute or consider other shipping options for routes with extreme congestion or high reliability rations. To be consistent with the industry measures of reliability, FHWA proposes to use the 95th percentile travel time in comparison to the 50th percentile travel time as the normal travel time. As a threshold, FHWA proposes that the reliability ratio be below 1.5. This means that the trips take no more than 50 percent longer than normal. The FHWA believes that the freight industry would not find trips that are longer than 50 percent above normal reliable. The FHWA seeks comments on this assumption.

The FHWA selected this ratio based on information it has received from stakeholders as well as its own research. As discussed with relation to section 490.513 (the performance of the NHS measures), FHWA believes that shippers and suppliers begin to consider the system to not meet expectations when trips take 50 percent longer than what they would normally expect.

The truck travel time reliability measure proposed in this subpart differs from the travel time reliability measure proposed in Subpart E (for performance of the Interstate and non-Interstate NHS) of this rulemaking in that the truck travel time reliability is focused on the variability in travel times experienced by trucks during all hours of the day and throughout the year. In contrast, the travel time reliability measure proposed in Subpart E is focused on the variability in travel times experienced by all vehicles that typically occur due to non-recurring events during the times of the day when the highway facility is in predominant use. The second proposed measure (Percent of the Interstate System Mileage Uncongested) uses average truck speeds to determine the percentage of Interstate System mileage that is considered uncongested. This measure is being proposed to assess where delays are occurring on the Interstate System so that strategies to address these locations can be implemented to improve the efficiency of freight movement. This measure differs from the reliability measure in that it is focused on shortening travel times where the reliability measure is focused on improving the consistency of travel times.

The congestion measure proposed in this subpart differs from the traffic congestion measure proposed in Subpart G (Annual Hours of Excessive Delay per Capita) of this rulemaking in that the speed threshold to identify the presence of congestion for freight movement is higher than the threshold used to define traffic congestion. In addition, the freight congestion measure broadly applies to all Interstate System roadways across the country where the traffic congestion measure is focused only on NHS roadways in the largest urbanized areas in the country. Both sets of measures are based on speed. The freight measures use speed to identify congested segments, while the traffic congestion measure uses speed to calculate the additional travel time caused by "excessive" delay.

The criteria used to establish the two proposed measures in this subpart are derived from research and testing of data by FHWA using the FPM. The FHWA produced two reports illustrating the use of Travel Time Reliability and Average Truck Speed measures to validate the proposed thresholds.[94] These reports provided insight into how well the measures described the travel conditions on the Interstate System confirming that the thresholds are appropriate for the measures.

Discussion of Section 490.609 Data Requirements

The FHWA is proposing that State DOTs use a travel time data set that would meet the requirements discussed in section 490.103 of this rulemaking to calculate the metrics defined in section 490.611. State DOTs and MPOs would use the same travel time data set to assess freight movement on the Interstate System.

The FHWA is proposing that State DOTs establish and submit reporting segments as discussed in section 490.103 of this rulemaking. These reporting segments would be used as the basis for calculating and reporting metrics to FHWA, and for their use and MPO use to calculate measures proposed in this subpart to assess freight movement. Reporting segments, as defined in section 490.101, include one or more travel time segments and must be contiguous so that they cover the full extent of the mainline highways of the Interstate System in the State. The section 490.103 discussion included in this rulemaking provides more information on the proposal for State DOTs to define and submit reporting segments.

The FHWA is proposing in this section that in cases where the travel time required to calculate a metric is missing or represented as a time of "0" or null in the Travel Time Data Set, State DOTs would be required to use an observed travel time that represents all traffic on the roadway during the same 5 minute interval (referred to as "all vehicles" in the NPMRDS) provided this travel time is representative of travel speeds less than the posted speed. In all other cases, FHWA is proposing that State DOTs use a travel time that would have occurred while traveling at the posted speed limit to replace missing travel times or those that are represented as a time of "0" or null in the Travel Time Data Set. The proposed use of the "all traffic" and posted speed data is discussed in section 490.611. As discussed previously, FHWA is not proposing that posted speed limit data be reported as part of this rulemaking.

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[94] FHWA 2006, Travel Time Reliability: Making It There On Time, All the Time. *http://ops.fhwa.dot.gov/publications/tt_reliability/*; FHWA 2006, Freight Performance Measure: Travel Time in Freight-Significant Corridors. *http://ops.fhwa.dot.gov/freight/freight_analysis/perform_meas/fpmtraveltime/traveltimebrochure.pdf.*

Discussion of Section 490.611 Calculation of Freight Movement Metrics

In section 490.611, FHWA proposes the methodologies for calculating Truck Travel Time Reliability and Average Truck Speed metrics. The FHWA is proposing the same method to calculate the truck travel time reliability metric as discussed for the LOTTR metric discussed in Subpart E of this rulemaking with the exception of the days/times and the travel time percentile used in the calculation. As discussed previously in Subpart E, this method would require State DOTs to assemble and organize a complete year of travel time data for each reporting segment to calculate the metric. The FHWA is proposing in section 490.611(b), that the assembled data would include, for each reporting segment, average truck travel times, to the nearest second, for 5 minute periods of the day, or 5-minute bins. The information in those 5-minute bins would be collected throughout the day, for every hour of every day from January 1st through December 31st of the same year. In cases where the 5-minute bins for travel time segments are:

- Missing from the dataset or include truck travel times reported as "0" or null; and
- do not include all traffic travel times representative of speeds less than the posted speed limit; then
- a truck travel time would be used that represents travel at the posted speed limit (TTT@PSL)

$$TTT@PSL(seconds) = \frac{Segment\ Length\ (miles)}{Posted\ Speed\ Limit\ (miles\ per\ hour)} x60x60$$

In section 490.611(b), to calculate the Truck Travel Time Reliability the FHWA is proposing that State DOTs would determine from the assembled data set described above the 95th percentile travel time and the 50th percentile travel time. The basis for the 95th percentile travel time is that it represents more certainty of on-time arrival for freight stakeholders. The 50th percentile was chosen, as previously described, based on an analysis of reliability measurement and how it compares to using the 20th percentile or average. The FHWA analyzed travel times for several regions in the Nation with different population characteristics and found that the 50th percentile provided the most accurate picture of reliability.

The metric would be determined by dividing the 95th percentile travel time by the 50th percentile travel time for each reporting segment. The FHWA believes that the 95th percentile travel time will represent the longest trip, excluding extreme outliers, that likely occurred on the reporting segment throughout the year and the 50th percentile travel time will typically represent the normal time experienced during the year. Therefore, the proposed metric will be an indication of the variability considering nearly all travel times that had occurred throughout the year. The FHWA is proposing this approach so that the Truck Travel Time Reliability metric would be an indicator of the planning time needed to assure a high level of confidence in on-time arrival of freight movements that could occur all hours of the day throughout the year. The FHWA is seeking comment specifically on the appropriateness of the proposed percentiles used in this metric calculation to assess reliability of truck travel times on the Interstate System.

In section 490.611(c), to calculate the Average Truck Speed metric for each reporting segment, truck travel speeds would be derived from the data in the travel time data set. Within that data set, for any 5-minute bins that are missing from the dataset, are missing data, or where data is reported as "0" or null, those bins would be replaced with the "all traffic" travel time value where the travel time correlates with speeds that are less than posted speed limit. In all other cases, it would be replaced with a travel time (TTT@PSL) that would represent the time to traverse the travel time segment at the posted speed limit.

Because the data set provides average travel times by Travel Time Segment and in 5-minute bins (or 5-minute periods), Average Truck Speed for a reporting segment would need to be calculated for the entire calendar year. Average truck travel time would be calculated by dividing the Travel Time Segment length by the truck travel time for each reporting segment for each 5-minute bin throughout the calendar year. Then, the result of this calculation for each of the 5-minute bins would be added together. This sum would be divided by the total number of 5-minute bins in a calendar year. This calculation would be done for each of the reporting segments.

In section 490.611(d), FHWA is proposing for State DOTs to report, on an annual frequency, the Truck Travel Time Reliability and Average Truck Speed metrics for each reporting segment on the Interstate System. State DOTs would report the annual outcomes to the HPMS by June 15th of the following year (*i.e.,* metrics for calendar year 2017 would be reported no later than June 15, 2018). Specifically, FHWA is proposing that State DOTs would report annually the following to the HPMS for each reporting segment:

- Reference NPMRDS TMC codes (or related reporting segments made up of multiple TMC codes) or standard HPMS location referencing;
- Truck Travel Time Reliability metric, to the nearest hundredth;
- 95th percentile travel time to the nearest second;
- 50th percentile travel time to the nearest second; and
- Average Truck Speed metric, to the nearest hundredth mile per hour.

The FHWA intends to issue additional guidance on how State DOTs could report these data to HPMS. The FHWA recognizes the level of effort needed to conflate travel time reporting segments to align them with a referenced highway network for the system performance and freight measures. For this reason, FHWA is not proposing a requirement for State DOTs to conflate the travel time reporting segments to the HPMS roadway network. The FHWA intends to conduct this conflation, if needed, if State DOTs choose to report the metrics by Travel Time Segment codes.

Discussion of Section 490.613 Calculation of Freight Movement Measures

In sections 490.613(a) and (b), FHWA proposes the method to calculate the measures to assess freight movement on the Interstate System proposed in section 490.607. This method would be used by State DOTs and MPOs to assess freight performance when reporting and establishing targets. The FHWA would also use this to report on freight performance at a national level. The two measures would be calculated using the annual metrics reported for reporting segments.

The proposed calculation method would be used to determine the percentage of the system, by length, operating at a specified level of performance for each of the two measures. The general format for this calculation is illustrated in the equation below:

$$Measure = 100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where:

- i = reporting segment
- R = total number of reporting segments operating at a specified performance level, as defined through a threshold proposed for each metric
- T = total number of reporting segments on the Interstate System in the State
- SL_i = length of the reporting segment, to the nearest thousandth of a mile
- Measure = the percentage of the system operating at a specified performance level (operating above the metric threshold).

The specific criteria proposed to calculate each of the measures following the format discussed above is proposed as follows:

- Truck Travel Time Reliability metric threshold < 1.50
- Average Truck Speed ≥ 50.00 mph.

The truck travel time reliability threshold of 1.50 is proposed to be the level at which truck travel times become unreliable. This level represents a condition where travel time could be no more than 50 percent longer than what would be expected during normal travel time conditions. Reliability levels greater than 1.50 are considered in this rulemaking to be unreliable due to the impact of the additional time that freight operators would need to consider and provide for during trip planning to assure on-time arrival. Reliability levels greater than 1.50 generally mean a trip could take twice as long as it would at the 50th percentile or normal travel time. This would not occur on every trip, but on the worst days. The FHWA also considered a threshold of 2.0, or twice the normal travel time, but determined that these travel times would be longer than most users would consider reliable. The FHWA ultimately chose the 1.5 threshold understanding that there will be some variability in travel time that may be beyond the ability of operating agencies to affect.

The average truck speed of 50.00 mph is proposed to be the level at which delay would exist on Interstate System highways when speeds are below this value as posted speed limits on Interstate System highways are typically 55 mph or greater. The FHWA is considering any travel speeds occurring below 50.00 mph to be representative of "congested" conditions for freight flow. The FHWA is seeking comment on the appropriateness of this speed threshold to indicate congested conditions.

4. Subpart G: National Performance Management Measures To Assess the Congestion Mitigation and Air Quality Improvement Program—Traffic Congestion

In this section, FHWA describes the proposed changes to Subpart G, which would establish a performance measure for assessing traffic congestion. The discussions of the proposed requirements are organized as follows:

- Section 490.701 discusses the purpose of the subpart;
- Section 490.703 describes the applicability of the subpart;
- Section 490.705 presents the definitions;
- Section 490.707 discusses the performance measure;
- Section 490.709 describes the data requirements;
- Section 490.711 identifies how to calculate performance metric; and,
- Section 490.713 presents how to calculate performance measure.

Discussion of Section 490.701 Purpose

The FHWA is required, under 23 U.S.C. 150(c), to establish performance measures for State DOTs to use to assess traffic congestion for the purpose of carrying out the CMAQ program. The FHWA proposes to establish in this subpart an excessive delay measure for State DOTs and MPOs to use to assess traffic congestion.

Discussion of Section 490.703 Applicability

The FHWA proposes that the measure apply only to those portions of the NHS in urbanized areas with a population over 1 million that contain areas designated as nonattainment or maintenance areas for the O_3, CO, or PM (PM_{10} and $PM_{2.5}$) NAAQS under the CAA Amendments of 1990.

The FHWA felt that the CMAQ Traffic Congestion measure should apply to nonattainment/maintenance areas and should relate to how the CMAQ program currently operates. Given the burden of developing multiple measures, FHWA chose to limit this measure to urbanized areas over 1 million in population, as agencies in these areas typically have more capability and experience in developing this type of measure than agencies outside of these areas. In addition, MPOs in these areas are expected to be the same MPOs that are required to report on this measure as part of the CMAQ performance plan requirements in 23 U.S.C. 149(l).

Many traffic congestion reduction projects that seek CMAQ funding use a form of a delay measure to show the benefits of traffic reduction (as well as emission reductions). This, in part, led FHWA to focus on a delay measure for the CMAQ Traffic Congestion measure, so that existing and future projects would use similar measures for analysis as the proposed national measure.

By establishing where and when the worst delay occurs on the NHS facilities in large urbanized areas where air quality is a concern, State DOTs and MPOs can better plan investments that address excessive delays and emissions reduction.

Discussion of Section 490.705 Definitions

The FHWA proposes to define "Excessive Delay" as the traffic speed that causes delays that would be perceived by users as being excessive (*i.e.*, delay that is significantly greater than normal and, therefore, an indication of the most congested conditions). The FHWA is proposing that "excessive delay" occurs on Interstates, freeways,[95] or expressways[95] when traffic slows to below 35 mph, and on other principal arterials[95] and all other roads included on the NHS when traffic slows to below 15 mph. These speed thresholds were chosen to represent "excessive" delay.

Discussion of Section 490.707 National Performance Management Measures for CMAQ Program—Traffic Congestion

In section 490.707, FHWA proposes the measure of Annual Hours of Excessive Delay Per Capita, which would be used by State DOTs, MPOs, and FHWA to assess traffic congestion performance of large urbanized areas that contain nonattainment or maintenance areas for any of the criteria pollutants under the CMAQ program. The FHWA is proposing that this measure be used to establish a single target and report on traffic congestion performance for each applicable urbanized area, including those that intersect with multiple State and metropolitan planning area boundaries. This measure is being proposed because it addresses the impact of transportation projects funded under the CMAQ program, which are often designed to create both emissions and congestion benefits. Incidentally, the proposed measure would also capture the impacts of transportation projects funded via other sources that aid in reducing congestion in areas applicable to this measure. Use of an excessive delay measure relates to the widespread use of delay-related metrics to justify congestion-related CMAQ projects, an important consideration when looking at what projects will help meet targets established under 23 U.S.C. 150(d) and 23 U.S.C. 134(h)(2).

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[95] *Highway Functional Classification Concepts, Criteria and Procedures (2013 Edition): http://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf.*

In order to capture the total delay over a full year, FHWA is proposing in this subpart to use vehicle counts as a method to expand the sampling of highway average travel times to all traffic using the system. The FHWA elected to propose the use of vehicle counts as this is the most accurate and widely available information on nationwide use of the system. Including vehicle counts in the measure helps ensure the measure reflects, as closely as possible from available data, the actual amount of vehicles delayed. If FHWA proposed a measure that did not include vehicle counts, the same length of delay on a high volume road would count the same as the same length of delay on a low volume road.

As discussed in the Performance Measure Analysis section of this rulemaking, DOT considered alternatives to a highway based traffic congestion measure that would reflect the delays experienced by all travelers using all modes of surface transportation but, for the reasons discussed in this rulemaking, elected to propose only a highway based measure as a first step. After careful consideration, FHWA determined that it would be too burdensome at this time to propose requirements for State DOTs and MPOs to gather and process the data necessary to calculate measures that would be representative of travelers using all surface transportation modes. Although technologies are improving and information on system use is more available, FHWA believes that the current state of practice is not yet mature enough to propose requirements to measure, in a reliable and consistent manner, more than highway delay. Considering the current state, FHWA is proposing a measurement approach that would focus on excessive delay experienced by motor vehicles on the highway system. The FHWA is proposing that this measure is expressed as a ratio of the total excessive highway delay experienced by all traffic to the population of the applicable area. This will provide a more meaningful measure as delay is related to a typical person's experience in traveling in the urbanized area. The FHWA recognizes that other options for making the Annual Vehicle Hours of Excessive Delay understandable to the public besides dividing by urban area population may exist. The FHWA encourages comments on using "per capita" or other options.

The FHWA and DOT would like to move to a measure in the future that could be used to assess traffic congestion in a manner that reflects the experience of all travelers using the various modes of surface transportation that are available in an urbanized area. For the purpose of this rulemaking, FHWA considers any expansion of the proposed approach to be a "future" measure of traffic congestion where such a measure could additionally capture the congestion as experienced by travelers that are using other modes such as: Transit, commuter railways, walkways, and bikeways. The DOT is taking steps now to work with State DOTs, MPOs, and other surface transportation stakeholders to study and advance the technologies that could be used to move the current state of practice to capture the necessary data to support a "future" measure.

The FHWA encourages public comment on the following issues related to the measure approach and methods that can be used to realize a "future" measure of traffic congestion.

- Are there existing methods that can be used reliably to weigh the highway delay metric by "total vehicle occupants" rather than "total number of vehicles"? Are there technologies or methods that could be advanced in the next 3–5 years to capture vehicle occupancy data?
- Which surface modes of transportation, other than highways, have readily available data that could be used to support a measure to assess traffic congestion? To what extent is this information available in the urbanized areas applicable to the measure proposed in this subpart?
- What would be the appropriate surface transportation network to use to measure traffic congestion in the future? Is data available off the NHS that can be used to assess traffic congestion that can be made available to all State DOTs and MPOs?

Discussion of Section 490.709 Data Requirements

The FHWA is proposing for State DOTs and MPOs to use a travel time data set that would meet the requirements discussed in section 490.103 of this rulemaking to calculate the metrics defined in section 490.711. State DOTs and MPOs would use the same travel time data set to assess traffic congestion for all applicable directional mainline highways on the NHS.

In section 490.709(b), FHWA is proposing for State DOTs to establish and submit reporting segments, in coordination with MPOs on the segments within metropolitan planning areas, as discussed in section 490.103 of this rulemaking. These reporting segments would be used as the basis for calculating and reporting metrics to FHWA and for calculating measures proposed in this subpart to assess traffic congestion. Reporting segments, as defined in 490.101, include one or more travel time segments, and would be contiguous so they cover the full extent of the mainline highways of the NHS in the State. The section 490.103 discussion included in this rulemaking provides more information on the proposal for State DOTs to define and submit reporting segments.

To calculate the measure, State DOTs also would need to provide estimates of hourly traffic volume that can be applied to some or all portions of the NHS in areas applicable to this measure. Traffic volumes would be needed to estimate the accumulated delay experienced by all users of the highway system. The FHWA is proposing in section 490.709(c) that State DOTs could use one of the two methods proposed in section 490.709(c)(1) to count or estimate hourly traffic volumes for each reporting segment. Examples of standard approaches to estimate hourly traffic include using AADT with k-factors or traffic profiles. The hourly traffic volumes do not have to be submitted to FHWA, but State DOTs would need to report to FHWA the method they used to estimate traffic volumes. State DOTs would need to report the method they use to FHWA no later than 60 days prior to the submittal of the first Baseline Performance Period Report. The FHWA recognizes State DOTs subsequently may change the method they used to estimate traffic volumes. Thus, FHWA proposes in section 490.709(c)(4) that if a State DOT elects to change the submitted methodology, then the State DOT would submit the changed methodology no later than 60 days prior to the submittal of next State Biennial Performance Report required in section 490.107(b).

The population of the applicable area is needed to calculate the proposed traffic congestion measure. The FHWA is proposing in section 490.709(d) that the most recently available U.S. Decennial Census population data available at the time when the State DOT Baseline Performance Period

Report is due to FHWA would be used for the entire performance period. Census-defined urbanized areas could change between the Decennial Census and could be adjusted on varying schedules. Consequently, the population in those changed or adjusted urbanized areas may change as well. The FHWA recognizes that if an urbanized area boundary is changed after the target is established by the State DOT for urbanized areas, then actual measured performance within the changed urbanized area boundary would represent a different transportation network and population as compared to what was used to establish the target. This difference could impact a State DOT's ability to make significant progress for targets. Thus, for calculating the traffic congestion measure, FHWA proposes that State DOTs and MPOs would use the latest Decennial Census population of urbanized areas available at the time when the State DOT Baseline Performance Period Reports are due to FHWA, regardless of subsequent boundary adjustment or natural population changes. This means that the population numbers used in the calculation of the traffic congestion measure would remain constant for the duration of a performance period.

Similarly, urbanized areas that contain nonattainment or maintenance areas would be based on the designation status at the time the State DOT Baseline Performance Period Report is due to FHWA, and that designation status would be used for the entire performance period.

The geographic areas that would be applicable to this measure would be identified in the State DOT Baseline Performance Period Report submitted to FHWA. These areas would continue to be applicable to the measure (or conversely remain "not applicable") for the duration of the performance period regardless of changes to designation, urbanized areas, or populations that may occur during the performance period. The FHWA is proposing that the applicability of the area be determined using the most recent U.S. Decennial Census reports on area populations; the urbanized areas approved by FHWA and submitted in HPMS at the start of a performance period; and the EPA nonattainment or maintenance designations for the O_3, CO, and PM NAAQS. At the time of this rulemaking, 36 urbanized areas in the U.S. would be applicable to this measure.

Discussion of Section 490.711 Calculation of Congestion Metric

The FHWA is proposing in this section for State DOTs to calculate the Total Excessive Delay for each reporting segment and report these metrics to FHWA annually.

Section 490.711(b) contains the specific data that is required to calculate the metric and is described in more detail in the discussion of section 490.709(b). The use of the data is explained in the proposed calculation methodology.

The FHWA is proposing in section 490.711(c) through (e) the method to calculate the Total Excessive Delay as discussed below.

Excessive Delay Threshold Travel Time—The FHWA is proposing in section 490.711(c) the establishment of two threshold travel speeds that would be used to indicate when operating conditions have deteriorated to the point that excessive travel time delays would occur. Any measured travel speeds below the threshold would represent the operating condition level that would result in excessive delays. These thresholds are proposed to be:

- 35 mph for Interstates, freeways, or expressways, and
- 15 mph for all other NHS roadways.

The FHWA defines congestion on the agency Traffic Congestion Reliability reporting Web site[96] as *"an excess of vehicles on a roadway at a particular time resulting in speeds that are slower—sometimes much slower—than normal or free flow speeds. (Congestion is) stop-and-go traffic."* The Urban Congestion Report, a quarterly publication produced for FHWA, uses a speed threshold of 45 mph to define congested travel on Interstates and other highways, in a number of urban areas across the country. Operating speeds that are below a "free flow" speed will generate some level of delay and therefore could be seen by travelers as a congested condition. The FHWA decided when establishing the proposed traffic congestion measure to assess when delays are excessively impacting travel, so that the worst congestion would be accounted for and, hopefully, addressed. By accounting for the worst congestion, FHWA believes that the proposed approach could help reduce overall traffic congestion. For this reason, FHWA selected proposed thresholds of 35 mph on Interstate and other highways to express excessive (rather than just congested conditions at 45 mph), and 15 mph on principle arterials and all other roadways on the NHS to identify excessive delay when speed limits can be as low as 25 mph on these roads. The threshold for Interstates and other highways is below the threshold FHWA uses to define congested travel in the Urban Congestion Report. However, FHWA believes that the proposed thresholds represent operating speeds that would excessively impact travel times. The FHWA encourages public comment on these proposed thresholds and invites alternative approaches to define the threshold at which excessive delay would occur.

The Excessive Delay Threshold Travel Time would be determined by the State DOT for each travel time segment to represent the time that it could take for a vehicle to traverse the reporting segment before excessive delay would occur. This time threshold would be determined by dividing the travel time segment length by the excessive delay threshold speed corresponding to the roadway functional level (35 mph or 15 mph) and converting the quotient to a time unit of seconds. For example, if a travel time segment on an Interstate is ½ mile in length, then the Excessive Delay Threshold Travel Time for that segment would be the travel time at 35 mph. The calculation would be Segment length (.5 mile) divided by threshold speed (35 mph) which equals .0142 hours, or 51.4 seconds.

Excessive Delay—The FHWA is proposing in section 490.711(d) the method to determine the amount of excessive delay occurring during each 5-minute interval for a Travel Time Segment within the travel time data set for which travel times were recorded. The excessive delay would be determined by comparing the recorded average travel time[97] from the 5-minute bin to the Excessive Delay Threshold Travel Time for the corresponding Travel Time Segment discussed in the previous paragraph. The excessive delay would need to be determined for every 5-minute interval for every hour and every day during a calendar year. The methodology proposed in the regulation identifies an arithmetic difference between the measured and an Excessive Delay Threshold Travel Time for each 5-minute bin for individual reporting segment as the travel time segment delay or the reporting segment delay (RSD).

The RSD, as calculated above, would result in a positive or negative amount

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[96] Traffic Congestion Reliability, *http://www.ops.fhwa.dot.gov/perf_measurement/index.htm.*

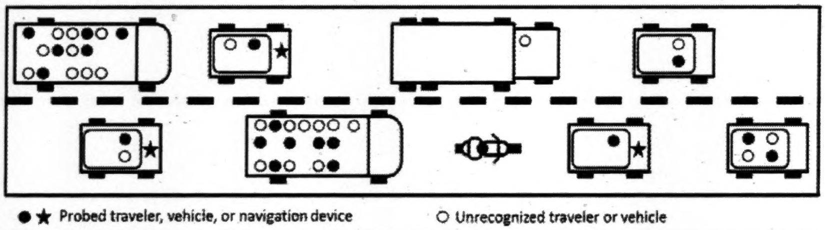
[97] The NMPRDS provides a recorded average travel time (in seconds) from the 5-minute bin for Travel Time Segment that is an average travel time of all the probes that traveled through that Travel Time Segment during a 5-minute interval.

of time. Any positive RSD values would be considered the additional amount of time, during the corresponding 5-minute time interval, each user of the roadway would have needed to traverse the Travel Time Segment as compared to traveling at the threshold speed. Any negative RSD times would represent 5-minute times in which travel is not excessively delayed. These negative RSD values would change to "0" seconds. Any positive RSD values that are calculated to be above 5 minutes would be capped at 5 minutes to prevent excessive delay from being counted twice. The excessive delay for the travel time segment would be determined by converting the RSD values (0 or greater than 0) to a unit of "hours," by dividing the RSD by 3,600 seconds/hour.

Total Excessive Delay—The FHWA is proposing in section 490.711(e) the method State DOTs would use to calculate the excessive delay metric for each reporting segment where this value represents the accumulated amount of additional time, in hours, that were experienced by all traffic throughout a full calendar year as a result of being excessively delayed. The metric would be calculated by first multiplying (1) the Excessive Delay values for a particular 5-minute bin by (2) the estimated traffic volume for a recorded 5-minute interval (which would be based on the hourly volume for the hour that corresponds to the 5-minute interval). That calculation would be done for every 5-minute bin of every day for the entire calendar year. Then, the product of those calculations would be added up for a reporting segment to produce the metric—Total Excessive Delay (in vehicle hours), an annual metric. This proposed calculation method would be based only on recorded travel times in the travel time data set as FHWA is assuming in this rulemaking that any missing or null travel time values would be occurring when travel times are consistent with free flow speeds. The FHWA believes that this assumption is valid as missing or null values would likely occur when very few or no vehicles are using the roadway.

The FHWA is proposing for State DOTs to use estimated hourly traffic volumes to expand the travel times, determined by probing a sample of highway users, to represent the total excessive delay experienced by roadway users. An example of this proposed method is provided in Figure 9 below:

Vehicle probes used to calculate the average travel time during a 5-minute bin


● ★ Probed traveler, vehicle, or navigation device
○ Unrecognized traveler or vehicle

Data Used For Calculation

5-minute bin Information
- 9:05 to 9:10 AM
- 178 probes recorded
- 82 seconds average travel time

Travel-Time Segment Information
- 0.50 mile length
- Freeway

Traffic Volume Information
- 9:00 to 9:59 AM hour
- 5,200 estimated for hourly traffic volume
- 433.3 vehicles estimated from 9:05 to 9:10 AM

Calculated Results for 5 minute bin

- Excessive Delay Threshold = 51 seconds
  - $\frac{0.50\ miles}{35\ mph} \times 3{,}600$
- Reporting Segment Delay (RSD) = 31 seconds
  - $82\ seconds - 51\ seconds$
- Excessive Delay = 0.009 hours
  - $\frac{31\ seconds}{3{,}600\ seconds/hour}$
- Total Excessive Delay = 3.900 vehicle-hours
  - $0.009\ hours \times 433.3\ vehicles\ per\ 5\ min$

Figure 9: Example-Total Excessive Delay

In this example, 178 highway probes were recorded (from mobile phones, vehicles, or portable navigation devices) during a 5-minute period of time which, on average, took 82 seconds to traverse a 0.50 mile long roadway segment located on a freeway. These highway users were experiencing excessive delay as the threshold time for this roadway segment is 51 seconds. For this example, the additional time experienced by each highway user as a result of being excessively delayed is estimated to be 0.009 hours. This delay per highway user is expanded to represent all traffic by multiplying the delay per user, 0.009 hours, by the estimated traffic volume during the 5 minute interval, 433.3 vehicles. The product of 3.900 vehicle-hours is the Total Excessive Delay for the 5 minute interval. The final metric for this example would then carry out this same process for every 5 minute interval through a full calendar year and for each travel time segment within the reporting segment.

The FHWA recognizes that the proposed method would apply a delay per highway user to total vehicles to identify the total excessive delay of vehicles. The FHWA elected to use this approach as it is believed that traffic volume data are the most accurate and complete data available on the use of the highways. As previously discussed, the FHWA desires to move to a future measure that would account for all travelers and encourages public comment as to how and when this can be accomplished in a reliable and accurate manner at a national level.

The FHWA is proposing section 490.711(f) that would require State DOTs to report annually on the Total Excessive Delay (as measured in vehicle-hours) metric for each applicable reporting segment on the NHS. State DOTs would report the annual outcomes to the HPMS by June 15th of the following year (*i.e.,* metrics for calendar year 2017 would be reported no later than June 15, 2018). Specifically, FHWA is proposing that State DOTs would report annually the following to the HPMS for each reporting segment:

- NPMRDS TMC codes or standard HPMS location referencing; and
- Total Excessive Delay metric, to the nearest one hundredth hours.

The FHWA intends to issue additional guidance on how State DOTs could report these data to HPMS. As discussed previously with respect to proposed sections 490.511 and 490.611, FHWA recognizes the level of effort to conflate travel time reporting segments to align with a referenced highway network. For this reason, FHWA is not proposing a requirement for State DOTs to conflate the travel time reporting segments to the HPMS roadway network. The FHWA intends to conduct this conflation, if needed, if State DOTs choose to report the metric by Travel Time Segment reference codes.

Discussion of Section 490.713 Calculation of Congestion Measure

The FHWA is proposing the method to be used by State DOTs and MPOs to calculate the traffic congestion measure, Annual Hours of Excessive Delay Per Capita, proposed in section 490.707. The FHWA, State DOTs, and MPOs would all use this method to assess performance, establish targets, and/or report on performance. The measure would be calculated by summing the Total Excessive Delay, calculated as proposed in section 490.711, of all reporting segments in the applicable area and then dividing this total by the population for the applicable area. As discussed in section 490.703, this measure is calculated for each urbanized area with a population over 1 million that contain nonattainment or maintenance areas for any of the criteria pollutants covered under the CMAQ program. A single measure would be determined for urbanized areas that intersect with multiple State and metropolitan planning area boundaries and for each applicable area within a State boundary. For example, in the State of Maryland, based on the 2010 U.S. Decennial Census and areas designated nonattainment or maintenance at the time of this rulemaking for O_3, CO, and/or PM; there are three TMAs that are applicable to this measure including Philadelphia, Baltimore, and Washington DC In this case, for Maryland, the State DOTs and MPOs with NHS mainline highways in these TMAs would need to calculate three identical measures for the entire area, and report associated targets: One for the Baltimore area, and one each for the Philadelphia area and the Washington DC area.

5. Subpart H: National Performance Management Measures for the Congestion Mitigation and Air Quality Improvement Program—On-Road Mobile Source Emissions

In this section, FHWA describes the proposed changes to Subpart H, which would establish a performance measure for assessing on-road mobile source emissions. The discussion of the proposed requirements is as follows:

- Section 490.801 discusses the purpose of the subpart;
- Section 490.803 describes the applicability of the subpart;
- Section 490.805 presents the definitions;
- Section 490.807 discusses the performance measure;
- Section 490.809 describes the data requirements;
- Section 490.811 identifies how to calculate performance metric;
- Section 490.813 presents how to calculate performance measure.

Discussion of Section 490.801 Purpose

The FHWA is required, under 23 U.S.C. 150(c), to establish performance measures for State DOTs to assess on-road mobile source emissions for the purpose of carrying out the CMAQ program. The FHWA proposes to establish in this subpart a measure for State DOTs and MPOs to use to assess the reduction of the criteria pollutants and applicable precursors under the CMAQ program through the programming of projects.

Discussion of Section 490.803 Applicability

In section 490.803(a), FHWA proposes that the on-road mobile source emissions performance measure would be applicable to State DOTs and MPOs that received funding from the CMAQ program that contain areas designated as nonattainment or maintenance for the O_3, CO, or PM (PM_{10} and $PM_{2.5}$) NAAQS under the Clean Air Act Amendments of 1990.

Similar to the traffic congestion measure, for this measure MPOs serving urbanized areas over 1 million in population with nonattainment and maintenance areas have additional performance reporting requirements (See 23 U.S.C. 149(l)). Because of the special emphasis for these areas, FHWA proposes that these areas would be subject to the full set of performance requirements. The FHWA anticipates that MPOs serving in these areas over 1 million in population with nonattainment or maintenance areas could calculate and use the proposed performance measure to assess on-road mobile source emissions in their applicable planning area as these organizations have more experience and capability to manage their air quality program through the transportation conformity process and the implementation of the CMAQ program, including estimating emissions reductions and reporting to the CMAQ Public Access System.[98] Accordingly, FHWA's proposal includes some additional requirements for the MPOs serving larger urbanized areas that are described in more detail throughout this NPRM. For nonattainment and maintenance areas defined in section 490.803(a) with a population below this threshold, even though they are not subject to the additional CMAQ performance plan reporting requirements, FHWA proposes that the measure would apply in these areas, but with more flexibility. The FHWA believes that since all O_3, CO, or PM nonattainment and maintenance areas, regardless of size, are eligible to receive CMAQ funds and all CMAQ-funded projects must demonstrate an emissions reduction, then the measure should apply to all areas. The FHWA believes that planning organizations serving smaller urbanized areas, including "donut areas" (as defined in 40 CFR 93.101) could either calculate and use the performance measure or support the State DOT and rely on it to calculate and use the performance measure to assess on-road mobile source emissions. State DOTs would also calculate and use the measure in "isolated rural nonattainment and maintenance areas," as defined in 40 CFR 93.101.

In section 490.803(b), FHWA proposes that State DOTs and MPOs that do not contain any O_3, CO, PM_{10}, and $PM_{2.5}$ nonattainment or maintenance areas would not be required to calculate and report on on-road mobile source emission performance as these State DOTs and MPOs are allowed for flexibility in spending their CMAQ funds whereby projects are not required to adhere to specific CMAQ eligibility requirements can be funded by CMAQ.

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[98] CMAQ Performance Plan as required by 23 U.S.C. 149(l).

Discussion of Section 490.805 Definitions

The FHWA proposes definitions associated with the on-road mobile source emissions performance measures that are used in the proposed regulation. It includes definitions for Donut Areas, Isolated Rural Nonattainment and Maintenance Areas, and On-Road Mobile Source.

The FHWA proposes to utilize the same definition for donut area and isolated rural nonattainment and maintenance areas, as found in the transportation conformity rule at 40 CFR 93.101. The FHWA proposes to define on-road mobile sources as emissions from vehicles that you would typically expect to find on our roadways, such as cars, trucks, and buses.[99]

Discussion of Section 490.807 National Performance Management Measures for CMAQ Program: On-Road Mobile Source Emissions

In section 490.807, FHWA proposes the measure of "Total Emissions Reduction" to assess on-road mobile source emissions. The measure will be the 2-year and 4-year cumulative reported emissions reduction resulting from CMAQ projects, by applicable criteria pollutants (O_3, CO, PM_{10}, and $PM_{2.5}$) and applicable precursors (*e.g.*, VOC and NO_X are precursors for O_3 and PM) for which the area is in nonattainment or maintenance. For example, in the case of O_3, a measure will need to be established for each of O_3's precursors, NO_X and VOC. The FHWA would like, through this rulemaking, to establish a measure that would rely on the existing processes State DOTs are using to manage, track, and report projects as part of the CMAQ program. For this reason, FHWA elected to base the proposed measure on the estimated emission reductions reported by State DOTs for CMAQ-funded projects through the CMAQ Public Access System. As discussed in the Measure Analysis section of the rulemaking, FHWA believes that this approach provides the best opportunity to effectively implement the MAP–21 performance requirements for on-road mobile source emissions. The data and tools to support the performance measure are readily available at a national level and are already in use today. The FHWA believes that collecting emissions data on a project-by-project basis through vehicle probing or another means would be cost prohibitive and would delay implementation because enough pre and post project completion data would not be available to accurately measure the actual reductions. The FHWA is proposing in this rulemaking to establish a measure that expresses the total emissions reduced per fiscal year, for all CMAQ-funded projects by pollutant and applicable precursors for which the area has been designated as nonattainment or maintenance. The emissions reductions would be summed for each fiscal year and cumulated by applicable pollutant and precursor to represent total reductions estimated after 2 fiscal years and after 4 fiscal years.

Discussion of Section 490.809 Data Requirements

The FHWA proposes to use the CMAQ Public Access System[100] as the data source for the measure, based on data available as of July 1 of the calendar year in which a CMAQ performance plan required in 23 U.S.C. 149(l) or State Biennial Performance Reports, required in section 490.107, is due. The CMAQ Public Access System is populated from the State DOT CMAQ annual report[101] which includes project information submitted through the CMAQ project tracking system.[102] The FHWA uses these yearly submissions through the CMAQ Public Access System to maintain a database of CMAQ investments as required by 23 U.S.C. 149(i)(1). Drawing from the information in the database, the CMAQ Public Access System provides an opportunity for the general public and project sponsors to have access to information submitted through the annual reporting process.

State DOTs report estimated emissions reductions of CMAQ projects for the first year that a project is obligated and only the first time a project is entered into the system, not each time the project receives CMAQ funds, to avoid double counting of benefits. The quantitative emissions reduction estimates are reported for each CMAQ-funded project in kilograms (kg) per day for applicable criteria pollutants (and their precursors) for which the area is nonattainment or maintenance. These five pollutants or precursors include CO, $PM_{2.5}$, PM_{10}, nitrogen oxides (NO_X), and volatile organic compound (VOC). Both NO_X and VOC are potential precursors to O_3, PM_{10} and $PM_{2.5}$. While no single method is specified in the CMAQ Guidance for estimating emissions, every effort should be taken to ensure that the estimates are credible and based on a reproducible and logical analytical procedure. The FHWA is working to develop a tool kit of best practices to improve the assumptions and calculations used to quantitatively estimate emissions.

For the purpose of establishing targets in section 490.105, FHWA proposes the annual reports shall include for each project, the applicable nonattainment or maintenance area and MPO for which the project is located, and quantified emissions reductions for all applicable criteria pollutants (and their precursors) for which the area is nonattainment or maintenance. For those projects that do not include a quantified emissions reduction (*i.e.*, public education and marketing), the CMAQ guidance allows for a qualitative assessment. This option is still allowed, but those projects will not be considered for the purposes of implementing the on-road mobile source emissions measure.

In 490.809(b), FHWA is proposing a period of approximately 120 days for FHWA to review and approve the data for publication in the CMAQ Public Access System. Considering this time allowance, FHWA is proposing that specific dates be established for when FHWA approves the State DOT's annual reports and when data are available for extraction from the CMAQ Public Access System for the purpose of implementing the on-road mobile source emissions measure. These dates are necessary in order to report the measures and establish targets in a timely manner. The FHWA is proposing the following dates:

- March 1—The FHWA is proposing that State DOTs enter their project information for a given fiscal year by March 1st of the following fiscal year; and
- July 1—The FHWA is proposing that it will make available the data necessary to calculate the on-road mobile source emissions measure will be in the CMAQ Public Access System by July 1st for project obligations in the prior fiscal year.

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[99] "What is Transportation Conformity?" training slides *https://connectdot.connectsolutions.com/whatisconformity/*.

[100] The Public Access System is available at: *https://fhwaapps.fhwa.dot.gov/cmaq_pub/HomePage/*.

[101] Guidance on CMAQ annual reporting can be found in section IX. C. of the CMAQ Interim Program Guidance under MAP–21, November 12, 2013.

[102] Information on the CMAQ project tracking system can be found at *http://www.fhwa.dot.gov/environment/air_quality/cmaq/reporting/*.

In 490.809(c), FHWA is proposing to identify nonattainment or maintenance areas based on the most recent effective designations made by the EPA when the State DOT Baseline Performance Period Report is due to FHWA. The areas designated at this time will remain as the areas applicable to this subpart for the duration of the performance period. For example, for a performance period that begins on October 1, 2017, and ends on September 30, 2021, FHWA would consider the designated areas as of October 1, 2018, to be those subject to this subpart even if the effective nonattainment and maintenance area designations change during the performance period after this date.

Discussion of Section 490.811 Calculation of Emissions Metric

The FHWA proposes in section 490.811 the method that would be used by State DOTs and MPOs to calculate the annual emission reductions for projects reported to the CMAQ Public Access System in a Federal fiscal year. The metric would be calculated for each CMAQ-funded project and for each applicable criteria pollutant and precursor. The proposed method would convert the emissions reductions reported in the CMAQ Public Access System from units of kg per day to short tons per year: One kg per day is equal to 0.4026 short tons per year. The emissions reductions would then be summed for all projects within the applicable reporting area, by criteria pollutant or precursor, for a Federal fiscal year. The annual emissions reductions (in tons/year) would be used to calculate the performance measure proposed in section 490.813.

Discussion of Section 490.813 Calculation of Emissions Measure

The FHWA proposes in section 490.813 that State DOTs and MPOs should calculate on-road mobile source emissions reductions by summing the annual tons of emissions reduced by CMAQ projects, using the 2 and 4 years of available data from the Public Access System as proposed in section 490.809 by criteria pollutant or precursor. For example, for the first proposed performance period that would begin on October 1, 2017, and end on September 30, 2021. So the 2-year total emissions reductions by criteria pollutant or applicable precursor for the performance period would reflect project data from Federal fiscal years from 2018 through 2019, and the 4-year total emissions reductions by criteria pollutant or applicable precursor for the performance period would reflect project data from Federal fiscal years from 2018 through 2021.

VII. Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after FHWA has had the opportunity to review the comments submitted.

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule constitutes a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866 and 13563 to improve regulation. This action is considered significant because of widespread public interest in the transformation of the Federal-aid highway program to be performance-based, although it is not economically significant within the meaning of Executive Order 12866. The FHWA is presenting a Regulatory Impact Analysis (regulatory analysis or RIA) in support of this NPRM on National Performance Measures to Assess Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program. The regulatory analysis estimates the economic impact, in terms of costs and benefits, on Federal, State, and local governments, as well as private entities regulated under this action, as required by Executive Order 12866 and Executive Order 13563. The economic impacts are measured on an incremental basis, relative to current practices.

This section of the NPRM identifies the estimated costs and benefits resulting from the proposed rule in order to inform policy makers and the public of the relative value of the current proposal. The complete RIA may be accessed from the rulemaking's docket (FHWA–2013–0054).

The cornerstone of MAP–21's highway program transformation is the transition to a performance-based program. In accordance with the law, State DOTs would invest resources in projects to achieve performance targets that make progress toward national goal areas. The MAP–21 establishes national performance goals for system reliability, freight movement and economic vitality, and environmental sustainability. The FHWA must promulgate a rule to establish performance measures to assess performance of the Interstate System and non-Interstate NHS; assess freight movement on the Interstate System, and to carry out the CMAQ program and assess traffic congestion and on-road mobile source emissions. As required by MAP–21, this NPRM identifies the following performance measures for which State DOTs and MPOs must collect and report data, establish targets for performance, and make progress toward achievement of targets:

1. Percent of the Interstate System providing for Reliable Travel Times;
2. Percent of the non-Interstate NHS providing for Reliable Travel Times;
3. Percent of the Interstate System where peak hour travel times meet expectations;
4. Percent of the non-Interstate NHS where peak hour travel times meet expectations;
5. Percent of the Interstate System Mileage providing for Reliable Truck Travel Times;
6. Percent of the Interstate System Mileage Uncongested;
7. Annual Hours of Excessive Delay Per Capita; and
8. Cumulative emissions reduction resulting from CMAQ projects by criteria pollutant for which the area is in nonattainment or maintenance.

Estimated Cost of the Proposed Rule

To estimate costs for the proposed rule, FHWA assessed the level of effort, expressed in labor hours and the labor categories, and capital needed to comply with each component of the proposed rule. Level of effort by labor category is monetized with loaded wage rates to estimate total costs.

Because there is some uncertainty regarding the availability of NPMRDS data for use by State DOTs and MPOs, FHWA estimated the cost of the proposed rule according to two scenarios. Under Scenario 1, FHWA assumes that it will provide State DOTs and MPOs with the required data from NPMRDS. Table 13 displays the total cost of the proposed rule for the 11-year study period (2016–2026).[103] Total costs over 11 years are estimated to be $165.3 million undiscounted, $117.4 million discounted at 7 percent, and $141.6 million discounted at 3 percent.

TABLE 13—TOTAL COST OF THE PROPOSED RULE UNDER SCENARIO 1

Cost components	11-Year total cost		
	Undiscounted	7%	3%
Section 490.103—Data Requirements	$21,241,714	$15,226,570	$18,275,559
Intake and Process DOT Travel Time Data	15,918,501	11,180,489	13,578,804
NPMRDS Data Acquisition	4,000,000	2,809,433	3,412,081
NPRMDS Data Training	489,800	457,757	475,534
NPMRDS Data Reconciliation	833,414	778,891	809,139
Section 490.105–490.109—Reporting Requirements	90,529,176	63,693,723	77,239,133
Document and Submit Description of Coordination Between State DOTs and MPOs	2,134,912	2,134,912	2,134,912
Establish and Update Performance Targets	40,763,607	29,114,925	35,021,902
Prepare and Submit Initial Performance Report	919,236	919,236	919,236
Reporting on Performance Targets Progress	31,269,138	21,219,453	26,279,023
Prepare CMAQ Performance Plan	13,465,179	9,137,563	11,316,326
Assess Significant Progress Toward Achieving Performance Targets	1,933,462	1,132,171	1,528,071
Adjust HPMS to Handle Data in TMC Format and Design Post-Submission Reports	24,804	23,181	24,082
HPMS Data Processing (*e.g.,* Data Verification)	18,838	12,282	15,581
Section 490.511—Calculation of Performance Metrics for NHS Performance	5,478,984	3,897,015	4,698,453
Calculate LOTTR	2,828,595	1,961,095	2,399,861
Estimate Desired Level of PHTTR for All Roads	787,736	654,465	723,310
Calculate PHTTR	1,862,653	1,281,455	1,575,282
Section 490.513—Calculation of Performance Measure for NHS Performance	4,285,750	3,111,923	3,709,859
Develop Reliability Performance Measures	3,084,798	2,239,901	2,670,283
Develop Travel Time Performance Measures	1,200,952	872,023	1,039,576
Section 490.611—Calculation of Performance Metrics for Freight Mobility	3,306,150	2,407,408	2,863,507
Calculate Average Truck Travel Speed: Establish Process	183,675	171,659	178,325
Calculate Average Truck Travel Speed: Update Average	1,469,400	1,032,045	1,253,428
Calculate Truck Reliability: Establish Process	183,675	171,659	178,325
Calculate Truck Reliability: Update Metric	1,469,400	1,032,045	1,253,428
Section 490.613—Calculation of Performance Measures for Freight Reliability	14,807,031	10,751,525	12,817,359
Develop Freight Travel Time Performance Measures	7,403,516	5,375,762	6,408,679
Develop Freight Reliability Performance Measures	7,403,516	5,375,762	6,408,679
Section 490.711—Calculation of Performance Metric for CMAQ Congestion	5,128,771	3,710,508	4,429,895
Calculate Excessive Delay Threshold Travel Time	1,282,193	927,627	1,107,474
Identify all 5-minute Bins with Travel Times above the Threshold Speed and Calculate Excessive Delay	1,165,630	818,690	994,306
Develop Hourly Traffic Volumes in Order to Weight Segments	1,515,319	1,145,502	1,333,810
Finalize Weighted Metrics for Reporting	1,165,630	818,690	994,306
Section 490.713—Calculation of Congestion Measure	6,612,300	4,801,253	5,723,782
Develop Congestion Performance Measure	6,612,300	4,801,253	5,723,782
Section 490.811—Calculation of Emissions Metric	13,285,826	9,331,408	11,333,079
Develop Emission Performance Metric for Some CMAQ Projects	13,285,826	9,331,408	11,333,079
Section 490.813—Calculation of Emissions Measure	593,412	430,882	513,673
Develop Emission Performance Measure	593,412	430,882	513,673
Total Cost of Proposed Rule	165,269,115	117,362,215	141,604,299

*Totals may not sum due to rounding.

Under Scenario 2, which represents "worst case" conditions, State DOTs would choose to independently acquire the necessary data. Table 14 displays the total cost of the proposed rule for the 11-year study period (2016–2026). Total costs over 11 years are estimated to be $224.5 million undiscounted, $158.9 million discounted at 7 percent, and $192.1 million discounted at 3 percent.

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[103] In FHWA's first two performance measure NPRMs, it assessed costs over a 10-year study period. Because FHWA is now proposing individual effective dates for each of its performance measure rules rather than a common effective date, the timing of the full implementation of the measures has shifted. Using an 11-year study period ensures that the cost assessment includes the first 2 performance periods following the effective date of the rulemaking, which is comparable to what the 10-year study period assessed in the first two NPRMs. An 11-year study period captures the first year costs related to preparing and submitting the Initial Performance Report and a complete cycle of the incremental costs that would be incurred by State DOTs and MPOs for assembling and reporting all required measures as a result of the proposed rule. FHWA anticipates that the recurring costs beyond this timeframe would be comparable to those estimated in the 10-year period of analysis.

TABLE 14—TOTAL COST OF THE PROPOSED RULE UNDER SCENARIO 2

Cost components	11-Year total cost		
	Undiscounted	7%	3%
Section 490.103—Data Requirements	$80,425,414	$56,794,724	$68,760,455
Acquire Freight and General Traffic Data	51,000,000	35,820,266	43,504,034
Adjust Contract for Freight-only Data	9,000,000	6,321,223	7,677,183
Remove Estimated Data Values from Database	3,183,700	2,236,098	2,715,761
Intake and Process	15,918,501	11,180,489	13,578,804
Data Training	489,800	457,757	475,534
Data Reconciliation	833,414	778,891	809,139
Section 490.105–490.109—Reporting Requirements	90,529,176	63,693,723	77,239,133
Document and Submit Description of Coordination Between State DOTs and MPOs	2,134,912	2,134,912	2,134,912
Establish and Update Performance Targets	40,763,607	29,114,925	35,021,902
Prepare and Submit Initial Performance Report	919,236	919,236	919,236
Reporting on Performance Targets Progress	31,269,138	21,219,453	26,279,023
Prepare CMAQ Performance Plan	13,465,179	9,137,563	11,316,326
Assess Significant Progress Toward Achieving Performance Targets	1,933,462	1,132,171	1,528,071
Adjust HPMS to Handle Data in TMC Format and Design Post-submission Reports	24,804	23,181	24,082
Data Processing (*e.g.*, Data Verification)	18,838	12,282	15,581
Section 490.511—Calculation of Performance Metrics for NHS Performance	5,478,984	3,897,015	4,698,453
Calculate LOTTR	2,828,595	1,961,095	2,399,861
Estimate Desired Level of PHTTR for All Roads	787,736	654,465	723,310
Calculate PHTTR	1,862,653	1,281,455	1,575,282
Section 490.513—Calculation of Performance Measure for NHS Performance	4,285,750	3,111,923	3,709,859
Develop Reliability Performance Measures	3,084,798	2,239,901	2,670,283
Develop Travel Time Performance Measures	1,200,952	872,023	1,039,576
Section 490.611—Calculation of Performance Metrics for Freight Mobility	3,306,150	2,407,408	2,863,507
Calculate Average Truck Travel Speed: Establish Process	183,675	171,659	178,325
Calculate Average Truck Travel Speed: Update Average	1,469,400	1,032,045	1,253,428
Calculate Truck Reliability: Establish Process	183,675	171,659	178,325
Calculate Truck Reliability: Update Metric	1,469,400	1,032,045	1,253,428
Section 490.613—Calculation of Performance Measures for Freight Reliability	14,807,031	10,751,525	12,817,359
Develop Freight Travel Time Performance Measures	7,403,516	5,375,762	6,408,679
Develop Freight Reliability Performance Measures	7,403,516	5,375,762	6,408,679
Section 490.711—Calculation of Performance Metric for CMAQ Congestion	5,128,771	3,710,508	4,429,895
Calculate Excessive Delay Threshold Travel Time	1,282,193	927,627	1,107,474
Identify All 5-minute Bins with Travel Times Above the Threshold Speed and Calculate Excessive Delay	1,165,630	818,690	994,306
Develop Hourly Traffic Volumes in Order to Weight Segments	1,515,319	1,145,502	1,333,810
Finalize Weighted Metrics for Reporting	1,165,630	818,690	994,306
Section 490.713—Calculation of Congestion Measure	6,612,300	4,801,253	5,723,782
Develop Congestion Performance Measure	6,612,300	4,801,253	5,723,782
Section 490.811—Calculation of Emissions Metric	13,285,826	9,331,408	11,333,079
Develop Emission Performance Metric for Some CMAQ Projects	13,285,826	9,331,408	11,333,079
Section 490.813—Calculation of Emissions Measure	593,412	430,882	513,673
Develop Emission Performance Measure	593,412	430,882	513,673
Total Cost of Proposed Rule	224,452,815	158,930,370	192,089,196

*Totals may not sum due to rounding.

The costs in Tables 14 and 15 assume a portion of MPOs will establish their own targets and a portion will adopt State DOT targets. For the performance measures that apply to all State DOTs and MPOs (*i.e.*, Travel Time Reliability and Freight Movement), it is assumed that State DOTs and MPOs serving TMAs [104] would use staff to establish performance targets and all other MPOs would adopt State DOT targets rather than establish their own targets and would therefore not incur any incremental costs. The FHWA made this assumption because larger MPOs may have more resources available to develop performance targets. The FHWA believes that this is a conservative estimate as larger MPOs may elect not to establish their own targets for any variety of reasons, including resource availability.

Break-Even Analysis

Currently, State DOTs differ from State to State in the way they evaluate the performance of the NHS, congestion, on-road mobile source emissions, and freight movement. These differences hinder accurate analysis at the national level. The proposed rulemaking would not only establish uniform performance measures, but also would establish processes that (1) State DOTs and MPOs use to report measures and establish performance targets and (2) FHWA uses to assess progress that State DOTs have made toward achieving targets.

Upon implementation, FHWA expects that the proposed rule would result in some significant benefits that are not easily monetized, but nonetheless deserve mention in this analysis. Specifically, the proposed rule would allow for more informed decisionmaking on congestion-, freight-, and air-quality-related project, program, and policy choices. The proposed rule also would yield greater accountability because the MAP–21-mandated reporting would increase visibility and transparency. In addition, the proposed rule would help focus the Federal-aid highway program on achieving balanced performance outcomes.

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[104] A Transportation Management Area (TMA) is an urbanized area having a population of over 200,000, or otherwise requested by the Governor and the MPO and officially designated by FHWA and FTA. 23 U.S.C. 134(k).

The expected benefits discussed above (*i.e.,* more informed decisionmaking, greater accountability, and the focus on making progress toward the national goal for infrastructure condition) would lead to an enhanced performance of the NHS due to reduced congestion, improved freight movement, and reduced emissions. The benefits, while real and substantial, are difficult to forecast and monetize. Therefore, FHWA addresses this issue by using the break-even analysis method suggested by OMB Circular A–4. Break-even analyses calculate the threshold a specific variable must achieve in order for benefits to equal costs while holding every other variable in the analysis constant. The FHWA performed three separate break-even analyses based on the estimated costs associated with: (1) Enhancing performance of the Interstate System and non-Interstate NHS by relieving congestion; (2) reducing emissions; and, (3) improving freight movement.

For the break-even analyses associated with enhancing the performance of the Interstate System and non-Interstate NHS, the costs associated with the following proposed rule sections are summed together to estimate the total cost of provisions aimed at reducing congestion:

- Section 490.103. Sixty percent of the cost[105] of obtaining data requirements;
- Section 490.105. Approximately 63 percent of the cost[106] of establishing performance targets;
- Section 490.107. Approximately 63 percent of the cost[107] of documenting and submitting a description of coordination between State DOTs and MPOs;
- Section 490.107. Approximately 63 percent of the cost[108] of preparing and submitting Initial Performance Reports;
- Section 490.107. Approximately 63 percent of the cost[109] of reporting performance targets;
- Section 490.107. Half the cost[110] of preparing CMAQ performance plan;
- Section 490.107. Sixty percent of the cost[111] of adjusting HPMS and processing data;
- Section 490.109. Cost of assessing significant progress for NHPP measures;
- Section 490.511. Cost of calculating system performance metrics;
- Section 490.513. Cost of calculating system performance measures;
- Section 490.711. Cost of calculating congestion metric; and
- Section 490.713. Cost of calculating congestion measure.

Table 15 presents the results from the break-even analysis associated with enhancing performance of the Interstate System and non-Interstate NHS under Scenario 1 (*i.e.,* FHWA provides NPMRDS data to State DOTs).

The results represent the passenger car travel time (in hours) that would need to be saved in order to justify the costs. The analysis shows that the proposed rule would need to result in approximately 354,000 hours of passenger car travel time saved per year, or 3.9 million hours over 11 years. To provide context, private commuters in 498 urban areas across the United States experience 5.5 billion hours of travel delay per year. As a result, the reduction represents a less than 0.01 percent decrease in the amount of travel delay per year for major U.S. urban areas.[112]

TABLE 15—BREAK-EVEN ANALYSIS OF INTERSTATE SYSTEM AND NON-INTERSTATE NHS PERFORMANCE (RELIABILITY, PEAK HOUR TRAVEL TIME, AND CONGESTION) UNDER SCENARIO 1

Undiscounted 11-year costs	Average commuter value of time ($ per hour)	Number of hours of travel that need to be reduced	Average annual number of hours of travel that need to be reduced
a	b	c = a ÷ b	d = c ÷ 11
$88,387,756	$22.72	3,891,103	353,737

* Variance in the calculation is due to rounding.
** Please refer to the RIA in the docket for details on the methodology used in the analysis.

Table 16 presents the results from the break-even analysis associated with enhancing performance of the Interstate System and non-Interstate NHS under Scenario 2 (*i.e.,* State DOTs independently acquire the necessary data). The results represent the passenger car travel time (in hours) that would need to be saved in order to justify the costs. The analysis shows that the proposed rule would need to result in approximately 496,000 hours of passenger car travel time saved per year, or 5.5 million hours over 11 years. To provide context, private commuters in 498 urban areas across the United States experience 5.5 billion hours of travel delay per year. This reduction represents a 0.01 percent decrease in the amount of travel delay per year for major U.S. urban areas.[113]

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[105] Sixty percent is assumed because three of the five metrics (LOTTR, PHTTR, and Total Excessive Delay) are calculated from NPMRDS and are aimed at improving system performance and reducing congestion.

[106] Approximately 63 percent is assumed because five of the eight performance measures (Reliability on the Interstate System, Reliability on the non-Interstate NHS, Peak Hour Travel Time on the Interstate System, Peak Hour Travel Time on the non-Interstate NHS, and Annual Hours of Excessive Delay Per Capita) are aimed at improving system performance and reducing congestion.

[107] Ibid.

[108] Ibid.

[109] Ibid.

[110] Fifty percent is assumed because one of the two CMAQ performance measures (Annual Hours of Excessive Delay Per Capita) is aimed at improving system performance and reducing congestion.

[111] Sixty percent is assumed because three of the five metrics (LOTTR, PHTTR, and Total Excessive Delay) are aimed at improving system performance and reducing congestion.

[112] Texas Transportation Institute's (TTI) "2012 Annual Urban Mobility Report," 2013.

[113] TTI's "2012 Annual Urban Mobility Report," 2013.

TABLE 16—BREAK-EVEN ANALYSIS OF INTERSTATE SYSTEM AND NON-INTERSTATE NHS PERFORMANCE (RELIABILITY, PEAK HOUR TRAVEL TIME, AND CONGESTION) UNDER SCENARIO 2

Undiscounted 11-year costs a	Average commuter value of time ($ per hour) b	Number of hours of travel that need to be reduced c = a ÷ b	Average annual number of hours of travel that need to be reduced d = c ÷ 11
$123,897,977	$22.72	5,454,373	495,852

* Variance in the calculation is due to rounding.
** Please refer to the RIA in the docket for details on the methodology used in the analysis.

Table 187 presents the results from the break-even analysis associated with the Freight Movement on the Interstate System measures under Scenario 1 (*i.e.*, FHWA provides NPMRDS data to State DOTs and MPOs). The costs associated with the following proposed rule sections are summed together to estimate the total cost of provisions aimed at reducing freight congestion:

- Section 490.103. Forty percent of the cost[114] of the data requirements;
- Section 490.105. Twenty-five percent of the cost[115] of establishing performance targets;
- Section 490.107. Twenty-five percent of the cost[116] of documenting and submitting a description of coordination between State DOTs and MPOs;
- Section 490.107. Twenty-five percent of the cost[117] of preparing and submitting Initial Performance Reports;
- Section 490.107. Twenty-five percent of the cost[118] of reporting performance targets;
- Section 490.107. Forty percent of the cost[119] of adjusting HPMS and processing data;
- Section 490.109. Cost of assessing significant progress for NHFP measures;
- Section 490.611. Cost of calculating freight movement metrics; and
- Section 490.613. Cost of calculating freight movement measures.

The results represent the amount of truck travel time (in hours) which would need to be saved in order to justify the costs associated with the Freight Movement on the Interstate System measures. The analysis shows that the proposed rule would need to result in approximately 168,000 hours of freight travel time saved per year, or 1.8 million hours over 11 years. This reduction represents a less than 0.1 percent decrease in the amount of freight travel delay per year for major U.S. urban areas.[120]

TABLE 17—BREAK-EVEN ANALYSIS OF FREIGHT PERFORMANCE (FREIGHT RELIABILITY, AVERAGE TRUCK SPEED) UNDER SCENARIO 1

Undiscounted 11-year costs a	Average truck value of time ($ per hour) b	Number of hours of travel that need to be reduced c = a ÷ b	Average annual number of hours of travel that need to be reduced d = c ÷ 11
$46,883,670	$25.36	1,848,481	168,044

* Variance in the calculation is due to rounding.
** Please refer to the RIA in the docket for details on the methodology used in the analysis.

Table 198 presents the results from the break-even analysis associated with the Freight Movement on the Interstate System measures under Scenario 2 (*i.e.*, State DOTs independently acquire the necessary data). The results represent the amount of truck travel time (in hours) which would need to be saved in order to justify the costs associated with the Freight Movement on the Interstate System measures. The analysis shows that the proposed rule would need to result in approximately 253,000 hours of freight travel time saved per year, or 2.8 million hours over 11 years. This reduction represents a 0.1 percent decrease in the amount of freight travel delay per year for major U.S. urban areas.[121]

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[114] Forty percent is assumed because two of the five metrics (Truck Travel Time Reliability and Average Truck Speed) calculated from NPMRDS are aimed at freight movement.

[115] Twenty-five percent is assumed because two of the eight performance measures (Freight Movement Reliability and Average Truck Speed) are aimed at reducing truck congestion.

[116] Ibid.

[117] Ibid.

[118] Ibid.

[119] Forty percent is assumed because two of the five metrics (Truck Travel Time Reliability and Average Truck Speed) calculated from NPMRDS are aimed at freight movement.

[120] Trucks in 498 urban areas across the U.S. experience 353.1 million hours of travel delay per year, according to the TTI's "2012 Annual Urban Mobility Report," 2013.

[121] Trucks in 498 urban areas across the U.S. experience 353.1 million hours of travel delay per year, according to the TTI's "2012 Annual Urban Mobility Report," 2013.

TABLE 18—BREAK-EVEN ANALYSIS OF FREIGHT PERFORMANCE (FREIGHT RELIABILITY, AVERAGE TRUCK SPEED) UNDER SCENARIO 2

Undiscounted 11-year costs a	Average truck value of time ($ per hour) b	Number of hours of travel that need to be reduced c = a ÷ b	Average annual number of hours of travel that need to be reduced d = c ÷ 11
$70,557,150	$25.36	2,781,855	252,896

* Variance in the calculation is due to rounding.
** Please refer to the RIA in the docket for details on the methodology used in the analysis.

Table 19 presents the results from the break-even analysis to estimate the reduction in pollutant tons[122] needed to be achieved in order to justify the costs associated with the Emissions performance measures. The costs associated with the following proposed rule sections are summed together to estimate the total cost of provisions aimed at reducing emissions:

- Section 490.105. Approximately 13 percent of the cost[123] of establishing performance targets;
- Section 490.107. Approximately 13 percent of the cost[124] of documenting and submitting a description of coordination between State DOTs and MPOs;
- Section 490.107. Approximately 13 percent of the cost[125] of preparing and submitting Initial Performance Reports;
- Section 490.107. Approximately 13 percent of the cost[126] of reporting performance targets;
- Section 490.107. Half the cost[127] of preparing CMAQ performance plan;
- Section 490.811. Cost of calculating emissions metric; and
- Section 490.813. Cost of calculating emissions measure.

The costs associated with the Emissions performance measure are identical under Scenario 1 and Scenario 2 because State DOTs would not need data from NPMRDS. Therefore, FHWA presents one set of results.

With the undiscounted cost of the on-road mobile source emissions requirements, the analysis estimates the savings in emission tons from automobiles that the proposed rule would need to save in order for the proposed rule to be cost-beneficial. The break-even analysis estimates that a total of 49,000 emission tons would need to be reduced throughout the 10-year study period, or approximately 4,000 tons annually. On a pollutant-specific basis, this is approximately equivalent to 410 tons of VOCs, 275 tons of NO_X, two tons of $PM_{2.5}$, and 3,730 tons of CO. These reductions represent less than 0.01 percent of the average annual pollutant emission amounts.[128]

TABLE 19—BREAK-EVEN ANALYSIS OF EMISSIONS (REDUCED POLLUTANTS) USING EMISSION TON METRIC

Undiscounted 11-year costs a	Average emission ton cost ($ per long ton) b	Number of emissions tons needed to be reduced c = a ÷ b	Average annual number of emissions tons needed to be reduced d = c ÷ 11
$29,997,688	$617.38	48,589	4,417

* Variance in the calculation is due to rounding.
** Please refer to the RIA in the docket for details on the methodology used in the analysis.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal funds to State DOTs for Federal-aid highway projects. The proposed rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they would need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. As discussed in the RIA, the proposed rule is expected to impose costs on MPOs that serve populations exceeding 200,000. Therefore, the MPOs that incur economic impacts under this proposed rule do not meet the definition of a small entity.

I hereby certify that this regulatory action would not have a significant impact on a substantial number of small entities.

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[122] Includes VOCs, NO_X, $PM_{2.5}$, and CO.

[123] Approximately 13 percent is assumed because one of the eight performance measures (Total Emissions Reduction) is aimed at reducing emissions.

[124] Ibid.

[125] Ibid.

[126] Ibid.

[127] Fifty percent is assumed because one of the two CMAQ performance measures (Total Emissions Reduction) is aimed at reducing emissions.

[128] In 2011, emissions by highway vehicles totaled 3 million tons VOCs, 4.1 million tons NO_X, 183,000 tons $PM_{2.5}$, and 34.2 million tons CO. Source: EPA Office of Air Quality Planning and Standards, summary data, included in EPA Greenhouse Gas Inventory for 2012 (*https://www3.epa.gov/climatechange/ghgemissions/usinventoryreport/archive.html*), and EPA, "National Emissions Inventory: Air Pollutant Emissions Trends Data," 2012, document posted to the Docket. Because these estimates are updated over time, there are variations in these data year-to-year. The FHWA will update the data at the Final Rule stage.

C. Unfunded Mandates Reform Act of 1995

The FHWA has determined that this NPRM does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $143.1 million or more in any one year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. The FHWA will publish a final analysis, including its response to public comments, when it publishes a final rule. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

D. Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

E. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this proposed rule under the PRA and has determined that this proposal contains collection of information requirements for the purposes of the PRA.

This proposed rule provides definitions and outlines processes for performance elements of this NPRM. Some burdens in this proposed rule would be realized in other reporting areas as described below. The PRA activities that are already covered by existing OMB Clearances have reference numbers for those clearances as follows:

HPMS information collection, OMB No. 2125–0028 with an expiration of May 2015 and CMAQ Program OMB 2125–0614 with an expiration date of (INSERT DATE) -. Any increase in PRA burdens caused by MAP–21 in these areas will be addressed in PRA approval requests associated with those rulemakings.

This rulemaking requires the submittal of performance reports. The DOT has analyzed this proposed rule under the PRA and has determined the following:

Respondents: Approximately 262 applicants consisting of State DOTs and MPOs.

Frequency: Biennially.

Estimated Average Burden per Response: Approximately 416 hours to complete and submit the report.

Estimated Total Annual Burden Hours: Approximately 65,312 hours annually.

The FHWA invites interested persons to submit comments on any aspect of the information collection. Comments submitted on the information collection proposed in this NPRM will be summarized or included, or both, in the request for OMB approval of this information collection.

G. National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

H. Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

I. Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

K. Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

L. Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

M. Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

N. Privacy Impact Assessment

The FHWA continues to assess the privacy impacts of this proposed rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (December 8, 2004) [set out as a note to 5 U.S.C. 552a].

The FHWA is proposing the use of the new NPMRDS as the data source to calculate the metrics for the seven travel time/speed based measures to ensure consistency and coverage at a national level. This private sector data set provides average travel times derived from vehicle/passenger probe data traveling on the NHS. The FHWA recognizes that probe data is an evolving field and we will continue to evaluate the privacy risks associated with its use.

O. Regulation Identifier Number

An RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington DC, on April 1, 2016, under authority delegated in 49 CFR 1.85.

Gregory G. Nadeau,

Federal Highway Administrator.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 490 as follows:

PART 490—NATIONAL PERFORMANCE MANAGEMENT MEASURES

■ 1. The authority citation for part 490 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 148(i), and 150; 49 CFR 1.85.

■ 2. Revise Subpart A to read as follows:

Subpart A—General Information

Sec.

490.101 Definitions.

490.103 Data requirements.

490.105 Establishment of performance targets.

490.107 Reporting on performance targets.

490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program.

490.111 Incorporation by reference.

§ 490.101 Definitions.

Unless otherwise specified, the following definitions apply to the entire part 490:

Attainment area as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

Criteria pollutant means any pollutant for which there is established a NAAQS at 40 CFR part 50. The transportation related criteria pollutants per 40 CFR 93.102(b)(1) are carbon monoxide, nitrogen dioxide, ozone, and particulate matter (PM_{10} and $PM_{2.5}$).

Freight bottleneck, as used in part 490, is defined as a segment of the Interstate System not meeting thresholds for freight reliability and congestion, as identified in § 490.613 and any other locations the State DOT wishes to identify as a bottleneck based on its own freight plans or related documents, if applicable.

Full extent means continuous collection and evaluation of pavement condition data over the entire length of the roadway.

Highway Performance Monitoring System (HPMS) is a national level highway information system that includes data on the extent, condition, performance, use, and operating characteristics of the Nation's highways.

Mainline highways means the through travel lanes of any highway. Mainline highways specifically exclude ramps, shoulders, turn lanes, crossovers, rest areas, and other pavement surfaces that are not part of the roadway normally traveled by through traffic.

Maintenance area as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

Measure means an expression based on a metric that is used to establish targets and to assess progress toward achieving the established targets (*e.g.,* a measure for flight on-time performance is percent of flights that arrive on time, and a corresponding metric is an arithmetic difference between scheduled and actual arrival time for each flight).

Metric means a quantifiable indicator of performance or condition.

Metropolitan Planning Organization (MPO) as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

National Ambient Air Quality Standards (NAAQS) as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

National Bridge Inventory (NBI) is an FHWA database containing bridge information and inspection data for all highway bridges on public roads, on and off Federal-aid highways, including Tribally owned and federally owned bridges, that are subject to the National Bridge Inspection Standards (NBIS).

National Performance Management Research Data Set (NPMRDS) means a data set derived from vehicle/passenger probe data (sourced from GPS, navigation units, cell phones) that includes average travel times representative of all traffic on each segment of the National Highway System (NHS), and additional travel times representative of freight trucks for those segments that are on the Interstate System. The data set includes records that contain average travel times for every 5 minutes of every day (24 hours) of the year recorded and calculated for every travel time segment where probe data is available. The NPMRDS does not include any imputed travel time data.

Nonattainment area as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

Non-urbanized area means a single geographic area that comprises all of the areas in the State that are not "urbanized areas" under 23 U.S.C. 101(a)(34).

Performance period means a determined time period during which condition/performance is measured and evaluated to: Assess condition/performance with respect to baseline condition/performance; and track progress toward the achievement of the targets that represent the intended condition/performance level at the midpoint and at the end of that time period. The term "performance period" applies to all proposed measures in this Part, except the measures proposed for the Highway Safety Improvement Program (HSIP) in Subpart B. Each performance period covers a 4-year duration beginning on a specified date (provided in § 490.105).

Reporting segment means the length of roadway that the State DOT and MPOs define for metric calculation and reporting and is comprised of one or more Travel Time Segments.

Target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Highway Administration (FHWA).

Transportation Management Area (TMA) as used in this Part is defined in § 450.104 of this title, Transportation Planning and Programming Definitions.

Travel time data set means either the NPMRDS or an equivalent data set that is used by State DOTs and MPOs as approved by FHWA, to carry out the requirements in Subparts E, F, and G of Part 490.

Travel time reliability means the consistency or dependability of travel times from day to day or across different times of the day.

Travel time segment means a contiguous stretch of the NHS for which average travel time data are summarized in the travel time data set.

§ 490.103 Data requirements.

(a) *In General.*—Unless otherwise noted below, the data requirements in this section applies to the measures identified in Subparts C through H of this part. Additional data requirements for specific performance management measures are identified in 23 CFR sections—

(1) 490.309 for the condition of pavements on the Interstate System;

(2) 490.309 for the condition of pavements on the non-Interstate NHS;

(3) 490.409 for the condition of bridges on the NHS;

(4) 490.509 for the performance of the Interstate System;

(5) 490.509 for the performance of the non-Interstate NHS;

(6) 490.609 for the freight movement on the Interstate System;

(7) 490.709 for traffic congestion; and

(8) 490.809 for on-road mobile source emissions.

(b) *Urbanized area data*—The State DOTs shall submit urbanized area data, including boundaries of urbanized areas, in accordance with the HPMS Field Manual for the purpose of the additional targets for urbanized and non-urbanized areas in § 490.105(e) and IRI rating determination in § 490.313(b)(1), and establishment and reporting on targets for the Peak Hour Travel Time measures in § 490.507(b) and the traffic congestion measure in § 490.707. The boundaries of urbanized areas shall be identified based on the most recent U.S. Decennial Census, unless FHWA approves adjustments to the urbanized area as provided by 23 U.S.C. 101(a)(34) and these adjustments are submitted to HPMS, available at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(c) *Nonattainment and Maintenance areas data*—The State DOTs shall use the nonattainment and maintenance areas boundaries based on the effective date of U.S. EPA designations in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(d) *National Highway System data.*—The State DOTs shall document and submit the extent of the NHS in accordance with the HPMS Field Manual.

(e) *Travel Time Data Set.*—Travel time data needed to calculate the measures in Subparts E, F, and G of this part will come from the NPMRDS, unless the State DOT requests, and FHWA approves, the use of an equivalent data source(s) that meets the requirements of this section. In accordance with 490.103(g), the State DOT shall establish, in coordination with applicable MPOs, a single travel time data set (*i.e.,* NPMRDS or equivalent data set) that will be used to calculate the annual metrics proposed in Subparts E, F, and G. The same data source shall be used for each year in a performance period. A State DOT and MPO(s) must use the same travel time data set for each reporting segment for the purposes of calculating the metrics and measures. The use of equivalent data source(s) shall comply with the following:

(1) State DOTs and MPOs shall use the same equivalent data source(s) for a calendar year; and

(2) The State DOT shall request FHWA approve the use of equivalent data source(s) no later than October 1st prior to the beginning of the calendar year in which the data source would be used to calculate metrics and FHWA would need to approve the use of that data source prior to a State DOT and MPO(s)'s implementation and use of that data source; and

(3) The State DOT shall make the equivalent data source(s) available to FHWA, on request; and

(4) The State DOT shall maintain and use a documented data quality plan to routinely check the quality and accuracy of data contained within the equivalent data source(s); and

(5) The equivalent data source(s) shall:

(i) Be used by both the State DOT and all MPOs within the State for all applicable travel time segments;

(ii) In combination with or in place of NPMRDS data, include:

(A) Contiguous segments that cover the full NHS, as defined in 23 U.S.C. 103, within the State and MPO boundary;

(B) Average travel times for at least the same number of 5 minute intervals and the same locations that would be available in the NPMRDS;

(iii) Be populated with actual measured vehicle travel times and shall not be populated with travel times derived from imputed (historic travel times or other estimates) methods;

(iv) Include, for each segment at 5 minute intervals throughout a full day (24 hours) for each day of the year, the average travel time, recorded to the nearest second, representative of at least one of the following:

(A) All traffic on each segment of the NHS;

(B) Freight vehicle traffic on each segment of the Interstate System;

(v) Include, for each segment, a recording of the time and date of each 5 minute travel time record;

(vi) Include the location (route, direction, State), length and begin and end points of each segment; and

(vii) Be available within 60 days of measurement.

(f) State DOTs, in coordination with MPOs, shall define a single set of reporting segments of the Interstate System and non-Interstate NHS for the purpose of calculating the measures specified in § 490.507, § 490.607, and § 490.707 in accordance with the following:

(1) Reporting segments shall be comprised of one or more contiguous Travel Time Segments of same travel direction;

(2) Reporting segments shall not exceed ½ mile in length in urbanized areas unless an individual Travel Time Segment is longer, and 10 miles in length in non-urbanized areas unless an individual Travel Time Segment is longer; and

(3) All reporting segments collectively shall be contiguous and cover the full extent of the directional mainline highways of the Interstate System and non-Interstate NHS required for reporting the measure.

(g) State DOTs shall submit their defined reporting segments to FHWA no later than November 1st prior to the beginning of a calendar year. If a State DOT is using an approved equivalent travel time data source during the performance period, the State DOT shall resubmit a new set of defined reporting segments that corresponds to the equivalent travel time data source. The State DOT shall submit the following to FHWA in HPMS:

(1) The Travel Time segment/s that make up each reporting segment; and

(2) The route and length (to the nearest thousandth of a mile) of each reporting segment; and

(3) The Desired Peak Period Travel Times (both morning and evening) that will be used to calculate the Peak Hour Travel Time measures identified in § 490.507(b) for each reporting segment that is fully included within urbanized areas with populations over one million.

(4) Documentation of the State DOT and applicable MPOs coordination and agreement on the travel time data set, the defined reporting segments, and the desired travel times submitted.

(5) If the defined reporting segments contain segments using equivalent data set, in part or in whole, all reporting

segment shall be referenced by HPMS location referencing standards.

§ 490.105 Establishment of performance targets.

(a) *In general.* — State Departments of Transportation (State DOTs) shall establish performance targets for all measures specified in paragraph (c) of this section for the respective target scope identified in paragraph (d) with the requirements specified in paragraph (e), and the Metropolitan Planning Organizations (MPOs) shall establish performance targets for all measures specified in paragraph (c) for respective target scope identified in paragraph (d) with the requirements specified in paragraph (f).

(b) *Highway Safety Improvement Program measures.*—State DOTs and MPOs shall establish performance targets for the Highway Safety Improvement Program (HSIP) measures in accordance with § 490.209.

(c) *Applicable measures.*—State DOTs and MPOs that include, within their respective geographic boundaries, any portion of the applicable transportation network or area shall establish performance targets for the performance measures identified in 23 CFR sections—

(1) 490.307(a)(1) and 490.307(a)(2) for the condition of pavements on the Interstate System;

(2) 490.307(a)(3) and 490.307(a)(4) for the condition of pavements on the National Highway System (NHS) (excluding the Interstate);

(3) 490.407(c)(1) and 490.407(c)(2) for the condition of bridges on the NHS;

(4) 490.507(a)(1) and 490.507(a)(2) for the NHS travel time reliability;

(5) 490.507(b)(1) and 490.507(b)(2) for the peak hour travel time;

(6) 490.607(a) and 490.607(b) for the freight movement on the Interstate System;

(7) 490.707 for traffic congestion; and

(8) 490.807 for on-road mobile source emissions.

(d) *Target scope.*—Targets established by the State DOT and MPO shall, regardless of ownership, represent the transportation network or geographic area, including bridges that cross State borders, that are applicable to the measures as specified in paragraphs (d)(1) and (2) of this section.

(1) State DOTs and MPOs shall establish Statewide and metropolitan planning area wide targets, respectively, that represent the condition/ performance of the transportation network or geographic area that are applicable to the measures, as specified in 23 CFR sections—

(i) 490.303 for the condition of pavements on the Interstate System measures specified in § 490.307(a)(1) and § 490.307(a)(2);

(ii) 490.303 for the condition of pavements on the National Highway System (NHS) (excluding the Interstate) measures specified in § 490.307(a)(3) and § 490.307(a)(4);

(iii) 490.403 for the condition of bridges on the NHS measures specified in § 490.407(c)(1) and § 490.407(c)(2);

(iv) 490.503(a)(1) for NHS travel time reliability measures specified in § 490.507(a)(1) and § 490.507(a)(2);

(v) 490.603 for the freight movement on the Interstate System measures specified in § 490.607(a) and § 490.607(b); and

(vi) 490.803 for the on-road mobile source emissions measure identified in § 490.807.

(2) State DOTs and MPOs shall establish a single urbanized area target that represents the performance of the transportation network in each area applicable to the measures, as specified in 23 CFR sections—

(i) 490.503(a)(2) for the peak hour travel time measures identified in § 490.507(b)(1) and § 490.507(b)(2); and

(ii) 490.703 for the traffic congestion measure identified in § 490.707.

(3) For the purpose of target establishment in this section, reporting targets and progress evaluation in § 490.107 and significant progress determination in § 490.109, State DOTs shall declare and describe the NHS limits and urbanized area boundaries within the State boundary in the Baseline Performance Period Report required by § 490.107(b)(1). Any changes in NHS limits or urbanized area boundaries during a performance period would not be accounted for until the following performance period.

(e) State DOTs shall establish targets for each of the performance measures identified in paragraph (c) of this section for respective target scope identified in paragraph (d) of this section as follows:

(1) *Schedule.*—State DOTs shall establish targets not later than 1 year of the effective date of this rule and for each performance period thereafter, in a manner that allows for the time needed to meet the requirements specified in this section and so that the final targets are submitted to FHWA by the due date provided in § 490.107(b).

(2) *Coordination.*—State DOTs shall coordinate with relevant MPOs on the selection of targets in accordance with 23 U.S.C. 135(d)(2)(B)(i)(II) to ensure consistency, to the maximum extent practicable.

(3) *Additional targets for urbanized and non-urbanized areas.*—In addition to statewide targets, described in paragraph (d)(1) of this section, State DOTs may, as appropriate, for each statewide target establish additional targets for portions of the State.

(i) A State DOT shall declare and describe in the Baseline Performance Period Report required by § 490.107(b)(1) the boundaries used to establish each additional target. Any changes in boundaries during a performance period would not be accounted for until the following performance period.

(ii) State DOTs may select any number and combination of urbanized area boundaries and may also select a non-urbanized area boundary for the establishment of additional targets.

(iii) The boundaries used by the State DOT for additional targets shall be contained within the geographic boundary of the State.

(iv) State DOTs shall evaluate separately the progress of each additional target and report that progress as required under § 490.107(b)(2)(ii)(B) and § 490.107(b)(3)(ii)(B).

(v) Additional targets for urbanized areas and the non-urbanized area are not applicable to the peak hour travel time measures, traffic congestion measures, and on-road mobile source emissions measures in paragraphs (c)(5), (c)(7), and (c)(8) of this section, respectively.

(4) *Time horizon for targets.*—State DOTs shall establish targets for a performance period as follows:

(i) The performance period will begin on:

(A) January 1st of the year in which the Baseline Performance Period Report is due to FHWA and will extend for a duration of 4 years for the measures in paragraphs (c)(1) through (c)(7) of this section; and

(B) October 1st of the year prior to which the Baseline Performance Report is due to FHWA and will extend for a duration of 4 years for the measure in paragraph (c)(8) of this section.

(ii) The midpoint of a performance period will occur 2 years after the beginning of a performance period described in paragraph (e)(4)(i) of this section.

(iii) Except as provided in paragraphs (e)(7) and (e)(8)(vi) of this section, State DOTs shall establish 2-year targets that reflect the anticipated condition/ performance level at the midpoint of each performance period for the measures in paragraphs (c)(1) through (c)(7) of this section, and the anticipated cumulative emissions reduction to be reported for the first 2 years of a performance period by applicable criteria pollutant and precursor for the measure in paragraph (c)(8) of this section.

(iv) State DOTs shall establish 4-year targets that reflect the anticipated condition/performance level at the end of each performance period for the measures in paragraphs (c)(1) through (c)(7) of this section, and the anticipated cumulative emissions reduction to be reported for the entire performance period by applicable criteria pollutant and precursor for the measure in paragraph (c)(8) of this section.

(5) *Reporting.*—State DOTs shall report 2-year targets, 4-year targets, the basis for each established target, progress made toward the achievement of targets, and other requirements to FHWA in accordance with § 490.107, and the State DOTs shall provide relevant MPO(s) targets to FHWA, upon request, each time the relevant MPOs establish or adjust MPO targets, as described in paragraph (f) of this section.

(6) *Target adjustment.*—State DOTs may adjust an established 4-year target in the Mid Performance Period Progress Report, as described in § 490.107(b)(2). Any adjustments made to 4-year targets established for the peak hour travel time measure specified in paragraph (c)(5) or traffic congestion measure in paragraph (c)(7) of this section shall be agreed upon and made collectively by all State DOTs and MPOs that include any portion of the NHS in the respective urbanized area applicable to the measure.

(7) *Phase-in of new requirements for Interstate System pavement condition measures and the non-Interstate NHS travel time reliability measures.*—The following requirements apply only to the first performance period and to the measures in §§ 490.307(a)(1) and (2) and § 490.507(a)(2):

(i) State DOTs shall establish their 4-year targets, required under paragraph (4)(iv), and report these targets in their Baseline Performance Period Report, required under § § 490.107(b)(1);

(ii) State DOTs shall not report 2-year targets, described in paragraph (e)(4)(iii) of this section, and baseline condition/performance in their Baseline Performance Period Report; and

(iii) State DOTs shall use the 2-year condition/performance in their Mid Performance Period Progress Report, described in § 490.107(b)(2)(ii)(A) as the baseline condition/performance. State DOTs may also adjust their 4-year targets, as appropriate.

(iv) State DOTs shall annually report metrics for all mainline highways on the NHS throughout the performance period, as required in § 490.511(d).

(8) *Urbanized area specific targets.*—The following requirements apply to establishing targets for the peak hour travel time measures specified in paragraph (c)(5) and traffic congestion measure in paragraph (c)(7) of this section, as their target scope provided in paragraph (d)(2) of this section:

(i) State DOTs, with mainline highways on the Interstate System that cross any part of an urbanized area with a population more than 1 million within its geographic State boundary, shall establish target for the measure specified in § 490.507(b)(1) for the urbanized area. State DOTs, with mainline highways on the non-Interstate NHS that cross any part of an urbanized area with a population more than 1 million within its geographic State boundary, shall establish target for the measure specified in § 490.507(b)(2) for the urbanized area.

(ii) If any part of the urbanized area for either of the peak hour travel time measures, provided for in paragraph (i) of this section, contains any part of a nonattainment or maintenance area for any one of the criteria pollutants, as specified in § 490.703, then that State DOT shall establish targets for the measure specified in § 490.707.

(iii) If required to establish a target for a peak-hour travel time measure, as described in paragraph (e)(8)(i) of this section and/or a target for a traffic congestion measure, as described in paragraph (e)(8)(ii), State DOTs shall comply with the following:

(A) For each urbanized area, only one 2-year target and one 4-year target for the entire urbanized area shall be established regardless of roadway ownership.

(B) For each urbanized area, all State DOTs and MPOs that contain, within their respective boundaries, any portion of the NHS network in that urbanized area shall agree on one 2-year and one 4-year target for that urbanized area. The targets reported, in accordance with § 490.105(e)(5) and § 490.105(f)(7), by the State DOTs and MPOs for that urbanized area shall be identical.

(C) State DOTs shall meet all reporting requirements in § 490.107 for the entire performance period even if there is a change of population, NHS designation, or nonattainment/maintenance area designation during that performance period.

(D) The 1 million population threshold, in paragraph (e)(8)(i) of this section, shall be determined based on the most recent U.S. Decennial Census available at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(E) NHS designations, in paragraphs (e)(8)(i) and (ii) of this section, shall be determined from the State DOT Baseline Performance Period Report required in § 490.107(b)(1)(ii)(E).

(F) The designation of nonattainment or maintenance areas, in paragraph of (ii) of this section, shall be determined based on the effective date of U.S. Environmental Protection Agency's designation under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(iv) If a State DOT does not meet the criteria specified in paragraph (e)(8)(i) of this section for both peak-hour travel time measures at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that State DOT is not required to establish targets for traffic congestion measure for that performance period.

(v) If a State DOT does not meet the criteria specified in paragraph (ii) at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that State DOT is not required to establish targets for the traffic congestion measure for that performance period.

(vi) The following requirements apply only to the first performance period and the traffic congestion measure in § 490.707:

(A) State DOTs shall establish their 4-year targets, required under paragraph § 490.105(e)(4)(iv), and report these targets in their Baseline Performance Period Report, required under § 490.107(b)(1);

(B) State DOTs shall not report 2-year targets, described in § 490.105(e)(4)(ii) of this section, and baseline condition/performance in their Baseline Performance Period Report; and

(C) State DOTs shall use the 2-year condition/performance in their Mid Performance Period Progress Report, described in § 490.107(b)(2)(ii)(A) as the baseline condition/performance. The established baseline condition/performance shall be collectively developed and agreed upon with relevant MPOs.

(D) State DOTs may, as appropriate, adjust their 4-year target(s) in their Mid Performance Period Progress Report, described in § 490.107(b)(2)(ii)(A). Adjusted 4-year target(s) shall be developed and collectively agreed upon with relevant MPO(s), as described in paragraph (e)(6) of this section.

(E) State DOTs shall annually report metrics for all mainline highways on the NHS for all applicable urbanized area(s) throughout the performance period, as required in § 490.711(f).

(9) *Targets for on-road mobile source emissions measure.*—The following requirements apply to establishing targets for the measures specified in paragraph (c)(8) of this section:

(i) The State DOTs shall establish statewide targets for the on-road mobile source emissions measure for all nonattainment and maintenance areas for all applicable criteria pollutants and precursors specified in § 490.803.

(ii) For all nonattainment and maintenance areas within the State geographic boundary, the State DOT shall establish separate statewide targets for each of the applicable criteria pollutants and precursors.

(iii) The established targets, as specified in paragraph (e)(4) of this section, shall reflect the anticipated cumulative emissions reduction to be reported in the CMAQ Public Access System required in § 490.809(a).

(iv) In addition to the statewide targets in paragraph (e)(9)(i) of this section, State DOTs may, as appropriate, establish additional targets for any number and combination of nonattainment and maintenance areas by applicable criteria pollutant within the geographic boundary of the State. If a State DOT establishes additional targets for nonattainment and maintenance areas, it shall report the targets in the Baseline Performance Period Report required by § 490.107(b)(1). State DOTs shall evaluate separately the progress of each of these additional targets and report that progress as required under § 490.107(b)(2)(ii)(B) and § 490.107(b)(3)(ii)(B).

(v) The designation of nonattainment or maintenance areas shall be determined based on the effective date of U.S. Environmental Protection Agency's designation under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(vi) The State DOT shall meet all reporting requirements in § 490.107 for the entire performance period even if there is a change of nonattainment or maintenance area designation status during that performance period.

(vii) If a State geographic boundary does not contain any part of nonattainment or maintenance areas for applicable criteria pollutants and precursors at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that State DOT is not required to establish targets for on-road mobile source emissions measures for that performance period.

(f) The MPOs shall establish targets for each of the performance measures identified in paragraph (c) of this section for the respective target scope identified in paragraph (d) of this section as follows:

(1) *Schedule.*—The MPOs shall establish targets no later than 180 days after the respective State DOT(s) establishes their targets, as provided in paragraph (e)(1) of this section.

(i) The MPOs shall establish 4-year targets, described in paragraph (e)(4)(iv) of this section, for all applicable measures, described in paragraphs (c) and (d) of this section.

(ii) Except as provided in paragraph (f)(4)(vi) of this section, the MPOs shall establish 2-year targets, described in paragraph (e)(4)(iii) of this section for the peak hour travel time, traffic congestion and on-road source emissions measures, described in paragraphs (c) and (d) of this section as their applicability criteria described in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(5)(iii) of this section, respectively.

(iii) If an MPO does not meet the criteria described in paragraphs (f)(4)(i), (f)(4)(ii), or (f)(5)(iii) of this section, the MPO is not required to establish 2-year target(s) for the corresponding measure(s).

(2) *Coordination.*—The MPOs shall coordinate with relevant State DOT(s) on the selection of targets in accordance with 23 U.S.C. 134(h)(2)(B)(i)(II) to ensure consistency, to the maximum extent practicable.

(3) *Target establishment options.*—For each performance measure identified in paragraph (c) of this section, except the peak hour travel time measures, the traffic congestion measure, and MPOs meeting the criteria under paragraph (5)(iii) for on-road mobile source emission measure, the MPOs shall establish a target by either:

(i) Agreeing to plan and program projects so that they contribute toward the accomplishment of the relevant State DOT target for that performance measure; or

(ii) Committing to a quantifiable target for that performance measure for their metropolitan planning area.

(4) *Urbanized area specific targets.*—The following requirements apply to establishing targets for the peak hour travel time measures specified in paragraph (c)(5) and traffic congestion measure in paragraph (c)(7) of this section, as their target scope provided in paragraph (d)(2) of this section:

(i) MPOs shall establish targets for the measure specified in § 490.507(b)(1) when mainline highways on the Interstate System within their metropolitan planning area boundary cross any part of an urbanized area with a population more than 1 million. MPOs shall establish targets for the measure specified in § 490.507(b)(2) when mainline highways on the non-Interstate NHS within their metropolitan planning area boundary cross any part of an urbanized area with a population more than 1 million.

(ii) MPOs shall establish targets for the measure specified in § 490.707 when mainline highways on the NHS within their metropolitan planning area boundary cross any part of an urbanized area with a population more than 1 million, and that portion of their metropolitan planning area boundary also contains any portion of a nonattainment or maintenance area for any one of the criteria pollutants, as specified in § 490.703. If an MPO is not required to establish a target for the measure specified in § 490.707, but any part of the urbanized area for either of the peak hour travel time measures, provided for in paragraph (i) of this section, contains any part of a nonattainment or maintenance area for any one of the criteria pollutant, as specified in § 490.703, then that MPO should coordinate with relevant State DOT(s) and MPO(s) in the target establishment process for the measure specified in § 490.707.

(iii) If required to establish a target for a peak-hour travel time measure, as described in paragraph (f)(4)(i) of this section and/or traffic congestion measure, as described in paragraph (f)(4)(ii), MPOs shall comply with the following:

(A) For each urbanized area, only one 2-year target and one 4-year target for the entire urbanized area shall be established regardless of roadway ownership.

(B) For each urbanized area, all State DOTs and MPOs that contain, within their respective boundaries, any portion of the NHS network in that urbanized area shall agree on one 2-year and one 4-year target for that urbanized area. The targets reported, in accordance with § 490.105(e)(5) and § 490.105(f)(7), by the State DOTs and MPOs for that urbanized area shall be identical.

(C) MPOs shall meet all reporting requirements in § 490.107(c) for the entire performance period even if there is a change of population, NHS designation, or nonattainment/maintenance area designation status during that performance period.

(D) The 1 million population threshold, in paragraph (f)(4)(i) of this section, shall be determined based on the most recent U.S. Decennial Census available at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(E) NHS designations, in paragraphs (f)(4)(i) and (ii) of this section, shall be determined from the State DOT Baseline Performance Period Report required in § 490.107(b)(1)(ii)(E).

(F) The designation of nonattainment or maintenance areas, in paragraph (f)(4)(ii) of this section, shall be determined based on the effective date of U.S. Environmental Protection Agency's designation under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(iv) If an MPO does not meet the criteria specified in paragraph (f)(4)(i) of this section at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that MPO is not required to establish targets for the peak hour travel time measure for that performance period.

(v) If an MPO does not meet the criteria specified in paragraph (f)(4)(ii) of this section at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that MPO is not required to establish targets for the traffic congestion measure for that performance period.

(vi) The following requirements apply only to the first performance period and the traffic congestion measure in § 490.707:

(A) The MPOs shall not report 2-year targets, described in paragraph (f)(4)(iii)(A) of this section,

(B) The MPOs shall use the 2-year condition/performance in State DOT Mid Performance Period Progress Report, described in § 490.107(b)(2)(ii)(A) as baseline condition/performance. The established baseline condition/performance shall be agreed upon and made collectively with relevant State DOTs.

(C) The MPOs may, as appropriate, adjust their 4-year target(s). Adjusted 4-year target(s) shall be collectively developed and agreed upon with all relevant State DOT(s), as described in paragraph (f)(7) of this section.

(5) *Targets for on-road mobile source emissions measures.*—The following requirements apply to establishing targets for the measure in paragraph (c)(8) of this section:

(i) The MPO shall establish targets for each of the applicable criteria pollutants and precursors, specified in § 490.803, for which it is in nonattainment or maintenance, within its metropolitan planning area boundary.

(ii) The established targets, as specified in paragraph (e)(4) of this section, shall reflect the anticipated cumulative emissions reduction to be reported in the CMAQ Public Access System required in § 490.809(a).

(iii) If any part of a designated nonattainment and maintenance area within the metropolitan planning area overlaps the boundary of an urbanized area with a population more than 1 million in population, then that MPO shall establish both 2-year and 4-year targets for their metropolitan planning area.

(iv) For the nonattainment and maintenance areas within the metropolitan planning area that do not meet the criteria in paragraph (f)(5)(iii) of this section, MPOs shall establish 4-year targets for their metropolitan planning area, as described in paragraph (f)(3) of this section.

(v) The designation of nonattainment or maintenance areas shall be determined based on the effective date of U.S. Environmental Protection Agency's designation under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(vi) The MPO shall meet all reporting requirements in § 490.107(c) for the entire performance period even if there is a change of nonattainment or maintenance area designation status or population during that performance period.

(vii) If a metropolitan planning area boundary does not contain any part of nonattainment or maintenance areas for applicable criteria pollutants and precursors at the time when the State DOT Baseline Performance Period Report is due to FHWA, then that MPO is not require to establish targets for on-road mobile source emissions measures for that performance period.

(6) *MPO response to State DOT target adjustment.*—For the established targets in paragraph (f)(3) of this section, if the State DOT adjusts a 4-year target in the State DOT's Mid Performance Period Progress Report and if, for that respective target, the MPO established a target by supporting the State DOT target as allowed under paragraph (f)(3)(i) of this section, then the MPO shall, within 180 days, report to the State DOT whether they will either:

(i) Agree to plan a program of projects so that they contribute to the adjusted State DOT target for that performance measure; or

(ii) Commit to a new quantifiable target for that performance measure for its metropolitan planning area.

(7) *Target adjustment.*—If the MPO establishes its target by committing to a quantifiable target, described in paragraph (f)(3)(ii) of this section or establishes target(s) for on-road source emissions measure required in paragraph (f)(5)(iii) of this section, then the MPOs may adjust its target(s) in a manner that is collectively developed, documented, and mutually agreed upon by the State DOT and MPO. Any adjustments made to 4-year targets, established for the peak hour travel time measure or traffic congestion measure in paragraph (f)(4)(i) or (ii) of this section, shall be collectively developed and agreed upon by all State DOTs and MPOs that include any portion of the NHS in the respective urbanized area applicable to the measure.

(8) *Reporting.*—The MPOs shall report targets and progress toward the achievement of their targets as specified in § 490.107(c). After the MPOs establish or adjust their targets, the relevant State DOT(s) must be able to provide these targets to FHWA upon request.

§ 490.107 Reporting on performance targets.

(a) *In general.*—All State DOTs and MPOs shall report the information specified in this section for the targets required in § 490.105.

(1) All State DOTs and MPOs shall report in accordance with the schedule and content requirements under paragraphs (b) and (c) of this section, respectively.

(2) For the measures identified in § 490.207(a), all State DOTs and MPO shall report on performance in accordance with § 490.213.

(3) State DOTs shall report using an electronic template provided by FHWA.

(4) *Initial State Performance Report.*—State DOTs shall submit an Initial Performance Report to FHWA by October 1, 2016, that includes the following information:

(i) The condition/performance of the NHS in the State for measures where the State DOT is required to establish targets and where data is available;

(ii) The effectiveness of the investment strategy document in the State asset management plan for the National Highway System;

(iii) Progress toward targets the State DOT are to establish, which may only be a description of how State DOTs are coordinating with relevant MPOs and other agencies in target selection for the targets to be reported in the first State Biennial Performance Report in 2018; and

(iv) The ways in which the State is addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, within the State.

(5) State DOTs shall report initial 2-year and 4-year targets, as described in § 490.105(e)(4), to FHWA within 30 days of target establishment by either amending the Initial State Performance Report due in October 2016, or through the Baseline Performance Report for the

first performance period, as described in § 490.107(b)(1)(i), whichever comes first.

(b) *State Biennial Performance Report.*— State DOTs shall report to FHWA baseline condition/performance at the beginning of a performance period and progress achievement at both the midpoint and end of a performance period. State DOTs shall report at an ongoing 2-year frequency as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) *Baseline Performance Period Report.*

(i) *Schedule.*—State DOTs shall submit a Baseline Performance Period Report to FHWA by October 1 of the first year in a performance period. State DOTs shall submit their first Baseline Performance Period Report to FHWA by October 1, 2018, and subsequent Baseline Performance Period Reports to FHWA by October 1 every 4 years thereafter.

(ii) *Content.*—The State DOT shall report the following information in each Baseline Performance Period Report:

(A) *Targets.*—2-year and 4-year targets for the performance period, as required in § 490.105(e), and a discussion, to the maximum extent practicable, of the basis for each established target;

(B) *Baseline condition/performance.*—Baseline condition/performance derived from the latest data collected through the beginning date of the performance period specified in § 490.105(e)(4)(i) for each target, required under paragraph (b)(1)(ii)(A) of this section;

(C) *Relationship with other performance expectations.*—A discussion, to the maximum extent practicable, on how the established targets in paragraph (b)(1)(ii)(A) of this section support expectations documented in longer range plans, such as the State asset management plan required by 23 U.S.C. 119(e) and the long-range statewide transportation plan provided in part 450 of this chapter;

(D) *Urbanized area boundaries and population data for targets.*—For the purpose of determining target scope in § 490.105(d), determining IRI rating in § 490.313(b)(1), and establishing additional targets for urbanized and non-urbanized areas in § 490.105(e)(3), State DOTs shall document the boundary extent for all applicable urbanized areas and the latest Decennial Census population data, based on information in HPMS;

(E) *NHS limits for targets.*— For the purpose of determining target scope in § 490.105(d), State DOTs shall document the extent of the NHS, based on information in HPMS;

(F) *Congestion at freight bottlenecks.*—Discussion on the ways in which the State DOT is addressing congestion at freight bottlenecks within the State, including those identified in the National Freight Strategic Plan, and any additional locations that the State DOT wishes to include as identified through comprehensive freight improvement efforts of Statewide Freight Planning or MPO freight plans; the Statewide Transportation Improvement Program and Transportation Improvement Program; regional or corridor level efforts; other related planning efforts; and operational and capital activities targeted to improve freight movement on the Interstate System;

(G) *Nonattainment and maintenance area for targets.*—Where applicable, for the purpose of determining target scope in § 490.105(d) and any additional targets under § 490.105(e)(9)(iv), State DOTs shall describe the boundaries of the U.S. Environmental Protection Agency's designated nonattainment and maintenance areas, as described in § 490.103(c) and § 490.105(e)(9)(v):

(H) *MPO CMAQ Performance Plan.*—Where applicable, State DOTs shall include as an attachment the MPO CMAQ Performance Plan, described in paragraph (c)(3) of this section.

(2) *Mid Performance Period Progress Report.*

(i) *Schedule.*—State DOTs shall submit a Mid Performance Period Progress Report to FHWA by October 1 of the third year in a performance period. State DOTs shall submit their first Mid Performance Period Progress Report to FHWA by October 1, 2020, and subsequent Mid Performance Period Progress Reports to FHWA by October 1 every 4 years thereafter.

(ii) *Content.*—The State DOT shall report the following information in each Mid Performance Period Progress Report:

(A) *2-year condition/performance.*—the actual condition/performance derived from the latest data collected through the midpoint of the performance period, specified in § 490.105(e)(4), for each State DOT reported target required in paragraph (b)(1)(ii)(A) of this section;

(B) *2-year progress in achieving performance targets.*—A discussion of the State DOT's progress toward achieving each established 2-year target in paragraph (b)(1)(ii)(A) of this section. The State DOT shall compare the actual 2-year condition/performance in paragraph (b)(2)(ii)(A) of this section, within the boundaries and limits documented in paragraphs (b)(1)(ii)(D) and (b)(1)(ii)(E) of this section, with the respective 2-year target and document in the discussion any reasons for differences in the actual and target values;

(C) *Investment strategy discussion.*—A discussion on the effectiveness of the investment strategies developed and documented in the State asset management plan for the NHS required under 23 U.S.C. 119(e);

(D) *Congestion at freight bottlenecks.*—Discussion on progress of the State DOT's efforts in addressing congestion at freight bottlenecks within the State, as described in paragraph (b)(1)(ii)(F) of this section;

(E) *Target adjustment discussion.*—When applicable, a State DOT may submit an adjusted 4-year target to replace an established 4-year target in paragraph (b)(1)(ii)(A) of this section. If the State DOT adjusts its target, it shall include a discussion on the basis for the adjustment and how the adjusted target supports expectations documented in longer range plans, such as the State asset management plan and the long-range statewide transportation plan. The State DOT may only adjust a 4-year target at the midpoint and by reporting the change in the Mid Performance Period Progress Report;

(F) *2-year significant progress discussion for the National Highway Performance Program (NHPP) targets and the National Highway Freight Program (NHFP) targets.*—State DOTs shall discuss the progress they have made toward the achievement of all 2-year targets established for the NHPP measures in § 490.105(c)(1) through (c)(5) and NHFP measures in 490.105(c)(6). This discussion should document a summary of prior accomplishments and planned activities that will be conducted during the remainder of the Performance Period to make significant progress toward that achievement of 4-year targets for applicable measures;

(G) *Extenuating Circumstances discussion on 2-year Targets.*—When applicable, for 2-year targets for the NHPP or NHFP, a State DOT may include a discussion on the extenuating circumstance(s), described in § 490.109(e)(5), beyond the State DOT's control that prevented the State DOT from making 2-year significant progress toward achieving NHPP or NHFP target(s) in paragraph (b)(2)(ii)(F) of this section;

(H) *Applicable Target Achievement Discussion.*—If FHWA determines that a State DOT has not made significant progress toward the achievement of any NHPP or NHFP targets in a biennial FHWA determination, then the State DOT shall include a description of the actions they will undertake to achieve those targets as required under § 490.109(f). If FHWA determines under § 490.109(e) that the State DOT has made significant progress for NHPP or NHFP targets, then the State DOT does not need to include this description for those targets; and

(I) *MPO CMAQ Performance Plan.*—Where applicable, State DOTs shall include as an attachment the MPO CMAQ Performance Plan, described in paragraph (c)(3) of this section.

(3) *Full Performance Period Progress Report.*

(i) *Schedule.*—State DOTs shall submit a progress report on the full performance period to FHWA by October 1 of the first year following the reference performance period. State DOTs shall submit their first Full Performance Period Progress Report to FHWA by October 1, 2022, and subsequent Full Performance Period Progress Reports to FHWA by October 1 every 4 years thereafter.

(ii) *Content.*—The State DOT shall report the following information for each Full Performance Period Progress Report:

(A) *4-year* condition/performance.—The actual condition/performance derived from the latest data collected through the end of the Performance Period, specified in § 490.105(e)(4), for each State DOT reported target required in paragraph (b)(1)(ii)(A) of this section;

(B) *4-year progress in achieving performance targets.*—A discussion of the State DOT's progress made toward achieving each established 4-year target in paragraph (b)(1)(ii)(A) or in paragraph (b)(2)(ii)(E) of this section, when applicable. The State DOT shall compare the actual 4-year condition/performance in paragraph (b)(3)(ii)(A) of this section, within the boundaries and limits documented in paragraphs (b)(1)(ii)(D) and (b)(1)(ii)(E) of this section, with the respective 4-year target and document in the discussion any reasons for differences in the actual and target values;

(C) *Investment strategy discussion.*—A discussion on the effectiveness of the investment strategies developed and documented in the State asset management plan for the NHS required under 23 U.S.C. 119(e);

(D) *Congestion at freight bottlenecks.*—Discussion on progress of the State DOT's efforts in addressing congestion at freight bottlenecks within the State, as described in paragraph (1)(ii)(F) of this section;

(E) *4-year significant progress evaluation for applicable targets.*—State DOTs shall discuss the progress they have made toward the achievement of all 4-year targets established for the NHPP measures in § 490.105(c)(1) through (c)(5) and NHFP measures in § 490.105(c)(6). This discussion shall include a summary of accomplishments achieved during the Performance Period to demonstrate whether the State DOT has made significant progress toward achievement of 4-year targets for those measures;

(F) *Extenuating circumstances discussion on applicable targets.*—When applicable, a State DOT may include discussion on the extenuating circumstance(s), described in § 490.109(e)(5), beyond the State DOT's control that prevented the State DOT from making a 4-year significant progress toward achieving NHPP or NHFP targets, described in paragraph (b)(3)(ii)(E) of this section;

(G) *Applicable Target Achievement Discussion.*—If FHWA determines that a State DOT has not made significant progress toward the achievement of any NHPP or NHFP targets in a biennial FHWA determinations, then the State DOT shall include a description of the actions they will undertake to achieve those targets as required under § 490.109(f). If FHWA determines in § 490.109(e) that the State DOT has made significant progress for NHPP or NHFP targets, then the State DOT does not need to include this description for those targets; and

(H) *MPO CMAQ Performance Plan.*—Where applicable, State DOTs shall include as an attachment the MPO CMAQ Performance Plan, described in paragraph (c)(3) of this section.

(c) *MPO Report.*—The MPOs shall establish targets in accordance with § 490.105 and report targets and progress toward the achievement of their targets in a manner that is consistent with the following:

(1) The MPOs shall report their established targets to their respective State DOT in a manner that is documented and mutually agreed upon by both parties.

(2) The MPOs shall report baseline condition/performance and progress toward the achievement of their targets in the system performance report in the metropolitan transportation plan in accordance with Part 450 of this chapter.

(3) MPOs serving a TMA with a population over one million representing nonattainment and maintenance areas for ozone, CO, or PM NAAQS shall develop a CMAQ performance plan as required by 23 U.S.C. 149(l). The CMAQ performance plan is not required when the MPO does not serve a TMA with a population over one million; the MPO is attainment for ozone, CO, and PM NAAQS; or the MPO's nonattainment or maintenance area for ozone, CO, or PM NAAQS is outside the urbanized area boundary of the TMA with a population over one million.

(i) The CMAQ performance plan shall be submitted as a separate section attached to the State Biennial Performance Reports, as required under § 490.107(b), and be updated biennially on the same schedule as the State Biennial Performance Reports.

(ii) For traffic congestion and on-road mobile source emissions measures in Subparts G and H, the CMAQ performance plan submitted with the State DOT's Baseline Performance Period Report shall include:

(A) The 2-year and 4-year targets for the traffic congestion measure, identical to the relevant State DOT(s) reported target under paragraph (b)(1)(ii)(A) of this section, for each applicable urbanized area;

(B) The 2-year and 4-year targets for the on-road mobile source emissions measure for the performance period;

(C) Baseline condition/performance for each MPO reported traffic congestion target, identical to the relevant State DOT(s) reported baseline condition/performance under paragraph (b)(1)(ii)(B) of this section;

(D) Baseline condition/performance derived from the latest estimated cumulative emissions reductions from CMAQ projects for each MPO reported on-road mobile source emissions target; and

(E) A description of projects identified for CMAQ funding and how such projects will contribute to achieving the performance targets for these measures.

(iii) For traffic congestion and on-road mobile source emissions measures in Subparts G and H, the CMAQ performance plan submitted with the State DOT's Mid Performance Period Progress Report shall include:

(A) 2-year condition/performance for the traffic congestion measure, identical to the relevant State DOT(s) reported condition/performance under paragraph (b)(2)(ii)(A) of this section, for each applicable urbanized area;

(B) 2-year condition/performance derived from the latest estimated cumulative emissions reductions from CMAQ projects for each MPO reported on-road mobile source emissions target;

(C) An assessment of the progress of the projects identified in the CMAQ performance plan submitted with the Baseline Performance Period Report toward achieving the 2-year targets for these measures;

(D) When applicable, an adjusted 4-year target to replace an established 4-year target; and

(E) An update to the description of projects identified for CMAQ funding and how those updates will contribute to achieving the 4-year performance targets for these measures.

(iv) For traffic congestion and on-road mobile source emissions measures in Subparts G and H, the CMAQ performance plan submitted with the State DOT's Full Performance Period Progress Report shall include:

(A) 4-year condition/performance for the traffic congestion measure, identical to the relevant State DOT(s) reported condition/performance reported under paragraph (b)(3)(ii)(A) of this section, for each applicable urbanized area;

(B) 4-year condition/performance derived from the latest estimated cumulative emissions reductions from CMAQ projects for each MPO reported on-road mobile source emissions target; and

(C) An assessment of the progress of the projects identified in both paragraphs (c)(3)(ii)(C) and (c)(3)(iii)(D) of this section toward achieving the 4-year targets for these measures.

§ 490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program.

(a) *In general.*—The FHWA will assess each of the State DOT targets separately for the measures specified in § 490.105(c)(1)through (c)(5) and the NHFP measures specified in § 490.105(c)(6) to determine the significant progress made toward the achievement of those targets.

(b) *Frequency.*—The FHWA will determine whether a State DOT has or has not made significant progress toward the achievement of applicable targets as described in paragraph (e) of this section at the midpoint and the end of each performance period.

(c) *Schedule.*—The FHWA will determine significant progress toward the achievement of a State DOT's NHPP and NHFP targets after the State DOT submits the Mid Performance Period Progress Report for progress toward the achievement of 2-year targets, and again after the State DOT submits the Full Performance Period Progress Report for progress toward the achievement of 4-year targets. The FHWA will notify State DOTs of the outcome of the determination of the State DOT's ability to make significant progress toward the achievement of its NHPP and NHFP targets.

(d) *Source of data/information.*—

(1) The FHWA will use the following sources of information to assess NHPP condition and performance progress:

(i) Data contained within the HPMS on June 15 of the year in which the significant progress determination is made that represents conditions from the prior year for targets established for Interstate System pavement condition measures, as specified in § 490.105(c)(1);

(ii) Data contained within the HPMS on August 15 of the year in which the significant progress determination is made that represents conditions from the prior year for targets established for non-Interstate NHS pavement condition measures, as specified in § 490.105(c)(2);

(iii) The most recently available data contained within the NBI as of June 15 of the year in which the significant progress determination is made for targets established for NHS bridge condition measures, as specified in § 490.105(c)(3);

(iv) The urbanized area boundary and NHS limit data in the HPMS as documented in the Baseline Performance Period Report specified in § § 490.107(b)(1)(ii)(D) and (E);

(v) Data contained within the HPMS on August 15 of the year in which the significant progress determination is made that represents performance from the prior year for targets established for the Interstate System and non-Interstate NHS performance measures, as specified in § 490.105(c)(4) and (5); and

(vi) Population data as defined by the most recent U.S. Decennial Census for urbanized areas available at the time when the State DOT Baseline Performance Period Report is due to FHWA.

(2) The FHWA will use the data contained within the HPMS on August 15 of the year in which the significant progress determination is made that represents performance from the prior year for targets established for NHFP measures, as specified in § 490.105(c)(6), to assess NHFP targets and performance progress.

(e) *Significant progress determination for individual NHPP and NHFP targets.*

(1) *In general.*—The FHWA will biennially assess whether the State DOT has achieved or made significant progress toward each target established by the State DOT for the NHPP measures described in § 490.105(c)(1) through (c)(5) and NHFP measures described in § 490.105(c)(6). The FHWA will assess the significant progress of each statewide target separately using the condition/performance data/information sources described in paragraph (d) of this section. The FHWA will not assess the progress achieved for any additional targets a State DOT may establish under § 490.105(e)(3).

(2) *Significant progress toward individual NHPP and NHFP targets.*—The FHWA will determine that a State DOT has made significant progress toward the achievement of each 2-year or 4-year applicable target if either:

(i) The actual condition/performance level is better than the baseline condition/performance reported in the State DOT Baseline Performance Period Report; or

(ii) The actual condition/performance level is equal to or better than the established target.

(3) *Phase-in of new requirements.*—The following requirements shall only apply to the first performance period and only to the Interstate System pavement condition targets and non-Interstate NHS travel time reliability targets, described in § 490.105(e)(7):

(i) At the midpoint of the first performance period, FHWA will not make a determination of significant progress toward the achievement of 2-year targets for Interstate System pavement condition measures.

(ii) The FHWA will classify the assessment of progress toward the achievement of targets in paragraph (e)(3)(i) of this section as "progress not determined" so that they will be excluded from the requirement under paragraph (e)(2) of this section.

(iii) FHWA will not make a determination of significant progress toward the achievement of 2-year targets for non-Interstate NHS travel time reliability measure.

(4) *Insufficient data and/or information.*—If a State DOT does not provide sufficient data and/or information, required under paragraph (d) of this section and § 490.107, necessary for FHWA to make significant progress determination for an NHPP or NHFP target, FHWA will determine that the State DOT has not made significant progress toward the achievement of the applicable target(s).

(5) *Extenuating circumstances.*—The FHWA will consider extenuating circumstances documented by the State DOT in the assessment of progress toward the achievement of NHPP and NHFP targets in the relevant State Biennial Performance Report, provided in § 490.107.

(i) The FHWA will classify the assessment of progress toward the achievement of an individual 2-year or 4-year target as "progress not determined" if the State DOT has provided an explanation of the extenuating circumstances beyond the control of the State DOT that prevented it from making significant progress toward the achievement of a 2-year or 4-year target and the State DOT has quantified the impacts on the condition/performance that resulted from the circumstances, which are:

(A) Natural or man-made disasters that caused delay in NHPP or NHFP project delivery, extenuating delay in data collection, and/or damage/loss of data system;

(B) Sudden discontinuation of Federal government furnished data due to natural and man-made disasters or lack of funding; and/or

(C) New law and/or regulation directing State DOTs to change metric and/or measure calculation.

(ii) If the State DOT's explanation, described in paragraph (e)(5)(i) of this section, is accepted by FHWA, FHWA will classify the progress toward achieving the relevant target(s) as "progress not determined," and those targets will be excluded from the requirement in paragraph (e)(2) of this section.

(f) *Performance achievement.*—

(1) If FHWA determines that a State DOT has not made significant progress toward the achieving of NHPP targets, then the State DOT shall include as part of the next performance target report under section 150(e) [the Biennial Performance Report] a description of the actions the State DOT will undertake to achieve the targets related to the measure in which significant progress was not achieved as follows:

(i) If significant progress is not made for either target established for the Interstate System pavement condition measures, § 490.307(a)(1) and § 490.307(a)(2), then the State DOT shall document the actions they will take to improve Interstate Pavement conditions;

(ii) If significant progress is not made for either target established for the Non-Interstate System pavement condition measures, § 490.307(a)(3) and § 490.307(a)(4), then the State DOT shall document the actions they will take to improve Non-Interstate Pavement conditions;

(iii) If significant progress is not made for either target established for the NHS bridge condition measures, § 490.407(c)(1) and § 490.407(c)(2), then the State DOT shall document the actions they will take to improve the NHS bridge conditions;

(iv) If significant progress is not made for either target established for the NHS travel time reliability measures, § 490.507(a)(1) and § 490.407(a)(2), then the State DOT shall document the actions they will take to achieve the NHS travel time targets;

(v) If significant progress is not made for either urbanized area specific target, described in § 490.105(e)(8), established for the peak hour travel measures, § 490.507(b)(1) and § 490.407(b)(2) for an urbanized area, then the State DOT shall document the actions they will take to achieve both the Interstate and non-Interstate NHS peak hour travel time targets that urbanized area;

(2) If FHWA determines that a State DOT has not made significant progress toward achieving the NHFP targets established for either of the NHFP measures in § 490.607(a) or § 490.607(b), then the State DOT shall include as part of the next performance target report under section 150(e) [the Biennial Performance Report], a description of the action the State will undertake to achieve the targets, including—

(i) An identification of significant freight system trends, needs, and issues within the State;

(ii) A description of the freight policies and strategies that will guide the freight-related transportation investments of the State;

(iii) An inventory of freight bottlenecks within the State and a description of the ways in which the State DOT is allocating national highway freight program funds to improve those bottlenecks; and

(iv) A description of the actions the State DOT will undertake to achieve the targets established for the Freight measures in § 490.607(a) and § 490.607(b).

(3) The State DOT should, within 6 months of the significant progress determination, amend its Biennial Performance Report to document the information specified in this paragraph to ensure actions are being taken to achieve targets.

§ 490.111 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FHWA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Highway Administration, Office of Highway Policy Information (202–366–4631) and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *www.fhwa.dot.gov.*

(1) Highway Performance Monitoring System (HPMS) Field Manual, IBR approved for Subparts A through C, and E through G.

(2) Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, Report No. FHWA–PD–96–001, December 1995 and errata, IBR approved for Subpart D.

(c) The American Association of State Highway and Transportation Officials, 444 North Capitol Street NW., Suite 249, Washington, DC 20001, (202) 624–5800, *www.transportation.org.*

(1) AASHTO Standard M328–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Equipment Specification for Inertial Profiler, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(2) AASHTO Standard R57–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Operating Inertial Profiling Systems, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(3) AASHTO Standard R55–10 (2013), Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Quantifying Cracks in Asphalt Pavement Surface, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(4) AASHTO Standard PP67–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Quantifying Cracks in Asphalt Pavement Surfaces from Collected Images Utilizing Automated Methods, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(5) AASHTO Standard PP68–14, Standard Specification for Collecting Images of Pavement Surfaces for Distress Detection, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(6) AASHTO Standard R48–10 (2003), Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Determining Rut Depth in Pavements, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(7) AASHTO Standard PP69–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Determining Pavement Deformation Parameters and Cross Slope from Collected Transverse Profiles, 2013, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(8) AASHTO Standard PP70–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Collection the Transverse Pavement Profile, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(9) AASHTO Standard R36–13, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Evaluating Faulting of Concrete Pavements, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

(10) AASHTO Standard R43–13, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Quantifying Roughness of Pavement, 2014, 34th/2014 Edition, AASHTO, 1–56051–606–4, IBR approved for Subpart C.

■ 3. Add a new Subpart E to read as follows:

Subpart E—National Performance Management Measures to Assess Performance of the National Highway System

Sec.

490.501 Purpose.
490.503 Applicability.
490.505 Definitions.
490.507 National Performance Management Measures for System Performance.
490.509 Data requirements.
490.511 Calculation of system performance metrics.
490.513 Calculation of system performance management measures.

§ 490.501 Purpose.

The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(3)(A)(ii)(IV) and (c)(3)(A)(ii)(V) to establish performance measures for State Departments of Transportation (State DOTs) and Metropolitan Planning Organizations (MPOs) to use to assess:

(a) Performance of the Interstate System; and

(b) Performance of the non-Interstate National Highway System (NHS).

§ 490.503 Applicability.

(a) The performance measures are applicable to those portions of the mainline highways on the NHS as provided below (and in more detail in § 490.507):

(1) The Reliability measures in § 490.507(a) are applicable to all directional mainline highways on the Interstate System and non-Interstate NHS.

(2) The Peak Hour Travel Time measures in § 490.507(b) are applicable to all directional mainline highways on the Interstate System and non-Interstate NHS that are within the boundary of urbanized areas with a population over one million.

§ 490.505 Definitions.

All definitions in § 490.101 apply to this subpart. Unless otherwise specified in this subpart, the following definitions apply:

Desired Peak Period Travel Time is the desired travel time on a specific reporting segment during the peak period that is defined in coordination between the State DOT and MPO.

Level of Travel Time Reliability is a comparison, expressed as a ratio, of the 80th percentile travel time of a reporting segment to the "normal" (50th percentile) travel time of a reporting segment occurring throughout a full calendar year.

Normal Travel Time (or 50th percentile travel time) is the time of travel to traverse the full extent of a reporting segment which is greater than the time for 50 percent of the travel in a calendar year to traverse the same reporting segment.

Peak Hour Travel Time is defined as the longest average annual travel time on a segment of roadway during the peak period.

The Peak Period is defined as non-holiday weekdays from 6:00 to 7:00 a.m., 7:00 to 8:00 a.m., 8:00 to 9:00 a.m., 4:00 to 5:00 p.m., 5:00 to 6:00 p.m. and 6:00 to 7:00 p.m.

Peak Hour Travel Time Ratio is defined as the ratio between the Peak Hour Travel Time and the Desired Peak Period Travel Time for a segment of roadway.

Travel Time Cumulative Probability Distribution means a representation of all the travel times for a road segment during a defined reporting period (such as annually) presented in a percentile ranked order as provided in the Travel Time Data Set. The normal (50th percentile) and 80th percentile travel times used to compute the Travel Time Reliability measure may be identified by the travel time cumulative probability distribution.

§ 490.507 National Performance Management Measures for System Performance.

There are four performance measures to assess the performance of the Interstate System and the performance of the non-Interstate NHS for the purpose of carrying out the National Highway Performance Program.

(a) Two measures are used to assess Reliability. They are:

(1) Percent of the Interstate System providing for Reliable Travel Times; and

(2) Percent of the non-Interstate NHS providing for Reliable Travel Times.

(b) Two measures are used to assess Peak Hour Travel Time in urbanized areas over 1,000,000 in population. They are:

(1) Percent of the Interstate System where Peak Hour Travel Times meet expectations; and

(2) Percent of the non-Interstate NHS where Peak Hour Travel Times meet expectations.

§ 490.509 Data requirements.

(a) Travel time data needed to calculate the measures in § 490.507 shall come from the Travel Time Data Set, as specified in § 490.103(e).

(1) State DOTs, in coordination with MPOs, shall define reporting segments in accordance with § 490.103(f) and submit the reporting segments in accordance with § 490.103(g). Reporting segments must be contiguous so that they cover the full extent of the mainline highways of the NHS in the State.

(2) [Reserved]

(b) State DOTs shall use posted speed limit data to calculate travel times when data is not available in the Travel Time Data Set (data not reported, or reported as "0" or null) as specified in § 490.511(b)(1)(v).

(c) Populations of urbanized areas shall be as identified based on the most recent U.S. Decennial Census available at the time when the State DOT Baseline Performance Period Report is due to FHWA. State DOTs and MPOs shall use this population to identify areas that are applicable to the Peak Hour Travel Time measure as specified in § 490.503.

§ 490.511 Calculation of system performance metrics.

(a) Two performance metrics are required for the measures specified in § 490.507. These are:

(1) Level of Travel Time Reliability (LOTTR)

(2) Peak Hour Travel Time Ratio (PHTTR)

(b) The State DOT shall calculate the LOTTR metrics for each NHS reporting segment in accordance with the following:

(1) Data sets shall be created from the Travel Time Data Set to be used to calculate the LOTTR metrics. This data set shall include, for each reporting segment, a ranked list of average travel times for all traffic ("all vehicles" in NPMRDS nomenclature), to the nearest second, for 5 minute periods of a population that:

(i) Includes travel times occurring between the hours of 6:00 a.m. and 10:00 a.m. for every weekday (Monday–Friday) from January 1st through December 31st of the same year;

(ii) Includes travel times occurring between the hours of 10:00 a.m. and 4:00 p.m. for every weekday (Monday-Friday) from January 1st through December 31st of the same year;

(iii) Includes travel times occurring between the hours of 4:00 p.m. and 8:00 p.m. for every weekday (Monday-Friday) from January 1st through December 31st of the same year;

(iv) Includes travel times occurring between the hours of 6:00 a.m. and 8:00 p.m. for every weekend day (Saturday-Sunday) from January 1st through December 31st of the same year; and

(v) Any travel time for Travel Time segments contained within a reporting segment that are not reported, or reported as "0" or null shall be replaced with the calculated travel time for that segment, based on the segment length and posted speed limit (TT@PSL), rounded to the nearest second.

$$\text{TT@PSL(seconds)} = \frac{\text{Segment Length (miles)}}{\text{Posted Speed Limit (miles per hour)}} \text{x60x60}$$

(2) The Normal Travel Time (50th percentile) shall be determined from each data set defined under paragraph (b)(1) of this section as the time in which 50 percent of the times in the data set are shorter in duration and 50 percent are longer in duration. The 80th percentile travel time shall be determined from the each data set defined under paragraph (b)(1) of this section as the time in which 80 percent of the times in the data set are shorter in duration and 20 percent are longer in duration. Both the Normal and 80th percentile travel times can be determined by plotting the data on a Travel Time Cumulative Probability Distribution graph or using the percentile functions available in spreadsheet and other analytical tools.

(3) Four LOTTR metrics shall be calculated for each reporting segment; one for each data set defined under paragraph (b)(1) of this section as the 80th percentile travel time divided by the 50th percentile travel time and rounded to the nearest hundredth.

(c) The State DOT shall calculate the PHTTR metric for each reporting segment that is included within an urbanized area with a population over 1,000,000 in accordance with the following:

(1) The State DOT, in coordination with the relevant MPOs, shall assign a "Desired Peak Period Travel Time," based on their operational policies for their NHS roadways, for each reporting segment for the peak period, one each for the three morning hours and three evening hours and report these to FHWA in accordance with § 490.103(g)(3).

(2) All travel times equating to speeds less than 2 mph or greater than 100 mph shall be removed from the calculation described in paragraph (c)(3) of this section.

(3) An average annual peak hour travel time for each reporting segment shall be computed for each peak hour on non-Federal holiday weekdays that includes travel times recorded from January 1st through December 31st of a calendar year. Morning peak hours for this metric shall include 6:00 to 7:00 a.m., 7:00 to 8:00 a.m., and 8:00 to 9:00 a.m. and afternoon peak hours for this measure shall include 4:00 to 5:00 p.m., 5:00 to 6:00 p.m., and 6:00 to 7:00 p.m. The average travel time for each peak hour shall be calculated for each reporting segment to the nearest whole second as the sum of the 5-minute bin segment average travel times for all traffic ("all vehicles" in NPMRDS nomenclature) occurring in the peak hour on non-Federal holiday weekdays throughout the year divided by the total count of 5-minute intervals where travel times were reported in the peak hour.

(4) The longest average annual peak hour travel time out of the 6 calculated in paragraph (c)(2) of this section shall be used to calculate the PHTTR metric for the reporting segment.

(5) The PHTTR metric shall be calculated for each reporting segment by using the longest average annual peak hour travel time as described in paragraph (c)(3) of this section divided by either the desired morning or afternoon peak hour travel time defined in paragraph (c)(1) of this section corresponding to the hour when the longest average annual peak hour travel time occurred, and rounded to the nearest hundredth.

(d) Starting in 2018 and annually thereafter, State DOTs shall report the metrics, as defined in this section, in accordance with HPMS Field Manual by June 15th of each year for the previous year's measures. Specifically, the following metrics shall be reported for each reporting segment:

(1) All reporting segments of the NPMRDS shall be referenced by NPMRDS TMC. If a State DOT elects to use, in part or in whole, the equivalent data set, all reporting segment shall be referenced by HPMS location referencing standards:

(2) The Level of Travel Time Reliability (LOTTR) metric (to the nearest hundredths) for each of the four time periods identified in paragraphs (b)(1)(i) through (iv) of this section; the corresponding 80th percentile travel times (to the nearest second); and the corresponding normal (50th percentile) travel times (to the nearest second);

(3) Peak Hour Travel Time Ratio (PHTTR) (to the nearest hundredth); peak hour travel time (to the nearest second); and the hour (6 a.m., 7 a.m., 8 a.m., 4 p.m., 5 p.m., or 6 p.m.) where the peak travel time occurred.

§ 490.513 Calculation of system performance measures.

(a) The performance measures in § 490.507 shall be calculated in accordance with this section and used by State DOTs and MPOs to carry out the Interstate System and non-Interstate NHS performance-related requirements of part 490, and by FHWA to make the significant progress determinations specified in § 490.109.

(b) The performance measure for Interstate System Travel Time Reliability specified in § 490.507(a)(1) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where,

R: Total number of Interstate System reporting segments that are exhibiting an LOTTR below 1.50 during all of the time periods identified in 490.511(b)(1)(i) through (iv);

i: Interstate System reporting segment;
SL_i: Length, to the nearest thousandth of a mile, of Interstate System reporting segment "i;"
T: Total number of Interstate System reporting segments.

(c) The performance measure for non-Interstate NHS Travel Time Reliability specified in § 490.507(a)(2) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where,
R: Total number of non-Interstate NHS reporting segments that are exhibiting an LOTTR below 1.50 during all of the time periods identified in § 490.511(b)(1)(i) through (iv);
i: Non-Interstate NHS reporting segment;
SL_i: Length, to the nearest thousandth of a mile, of non-Interstate NHS reporting segment "i;"
T: Total number of non-Interstate NHS reporting segments

(d) The performance measure for Interstate System Peak Hour Travel Time specified in § 490.507(b)(1) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where,
R: Total number of Interstate System reporting segments that are exhibiting a PHTTR below 1.50;
i: Interstate System reporting segment in an urbanized area with a population over one million;
SL_i: Length, to the nearest thousandth of a mile, of Interstate System reporting segment "i";
T: Total number of Interstate System reporting segments in an urbanized area with a population over one million.

(e) The performance measure for non-Interstate NHS Peak Hour Travel Time specified in § 490.507(b)(2) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{i=1}^{R} SL_i}{\sum_{i=1}^{T} SL_i}$$

Where,
R: Total number of non-Interstate NHS reporting segments that are exhibiting a PHTTR below 1.50;
i: Non-Interstate NHS reporting segment in an urbanized area with a population over one million;
SL_i: Length, to the nearest thousandth of a mile, of non-Interstate NHS reporting segment "i";
T: Total number of non-Interstate NHS reporting segments in an urbanized area with a population over one million.

■ 4. Add Subpart F to read as follows:

Subpart F—National Performance Management Measures to Assess Freight Movement on the Interstate System

Sec.
490.601 Purpose.
490.603 Applicability.
490.605 Definitions.
490.607 National performance management measures to assess freight movement on the Interstate System.
490.609 Data requirements.
490.611 Calculation of freight movement metrics.
490.613 Calculation of freight movement measures.

§ 490.601 Purpose.

The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(6) to establish performance measures for State Departments of Transportation (State DOTs) and the Metropolitan Planning Organizations (MPOs) to use to assess the national freight movement on the Interstate System.

§ 490.603 Applicability.

The performance measures to assess the national freight movement are applicable to the Interstate System.

§ 490.605 Definitions.

The definitions in § 490.101 apply to this subpart.

§ 490.607 National performance management measures to assess freight movement on the Interstate System.

There are two performance measures to assess freight movement on the Interstate System. They are:

(a) Percent of the Interstate System Mileage providing for Reliable Truck Travel Times; and

(b) Percent of the Interstate System Mileage Uncongested.

§ 490.609 Data requirements.

(a) Travel time data needed to calculate the measures in § 490.607 shall come from the Travel Time Data Set, as specified in § 490.103(e).

(b) State DOTs, in agreement with MPOs, shall define reporting segments in accordance with § 490.103(f) and submit the reporting segments in accordance with § 490.103(g). Reporting segments must be contiguous so that they cover the full extent of the directional mainline highways of the Interstate in the State.

(c) When truck travel times are not available in the Travel Time Data Set (data not reported, or reported as "0" or null) as specified in § 490.611(b)(1)(ii) for a given 5 minute interval State DOTs shall replace the missing travel time as follows:

(1) Replace the missing value with an observed travel time that represents all traffic on the roadway during the same 5 minute interval ("all vehicles" in NPMRDS nomenclature) provided this travel time is associated with travel speeds that are less than the posted speed limit; or

(2) Replace the missing value with the travel time that would have occurred while traveling at the posted speed limit.

§ 490.611 Calculation of freight movement metrics.

(a) Two performance metrics are required for the measures specified in § 490.607. These are:

(1) Truck Travel Time Reliability.

(2) Average Truck Speed.

(b) The State DOT shall calculate the Truck Travel Time Reliability metric for each Interstate System reporting segment in accordance with the following:

(1) A truck travel time data set shall be created from the Travel Time Data Set to be used to calculate the Truck Travel Time Reliability metric. This data set shall include, for each reporting segment, a ranked list of average truck travel times, to the nearest second, for 5 minute periods of a 24 hour period for an entire calendar year that:

(i) Includes truck travel times occurring for all hours of every day and for every 24-hour period from January 1st through December 31st of the same year; and

(ii) Any truck travel times for Travel Time Segments contained within a reporting segment that are not reported, or reported as "0" or null shall be replaced with an observed travel time that represents all traffic on the roadway during the same 5 minute interval ("all vehicles" in NPMRDS nomenclature) provided this travel time is associated with travel speeds that are less than the posted speed limit. In all other cases the truck travel time shall be replaced with a calculated truck travel time for that segment, based on the segment length and posted speed limit (TTT@PSL), rounded to the nearest second.

$$TTT@PSL(seconds) = \frac{Segment\ Length\ (miles)}{Posted\ Speed\ Limit\ (miles\ per\ hour)} x60x60$$

(2) The Normal Truck Travel Time (50th percentile) shall be determined from the truck travel time data set defined under paragraph (b)(1) of this section as the time in which 50 percent of the times in the data set are shorter in duration and 50 percent are longer in duration. The 95th percentile truck travel time shall be determined from the truck travel time data set defined under paragraph (b)(1) of this section as the time in which 95 percent of the times in the data set are shorter in duration. Both the Normal and 95th percentile truck travel times can be determined by plotting the data on a Travel Time Cumulative Probability Distribution graph or using the percentile functions available in spreadsheet and other analytical tools.

(3) The Truck Travel Time Reliability metric shall be calculated for each Interstate System reporting segment as the 95th percentile truck travel time divided by the Normal Truck Travel Time (50th percentile truck travel time), rounded to the nearest hundredth.

(c) The State DOT shall calculate the Average Truck Speed metric for each Interstate System reporting segment, in accordance with the following:

(1) Any truck travel times for the travel time segments contained within a reporting segment that are not reported, or reported as "0" or null shall be replaced with an observed travel time that represents all traffic on the roadway during the same 5 minute interval ("all vehicles" in NPMRDS nomenclature) provided this travel time is associated with travel speeds that are less than the posted speed limit. In all other cases the truck travel time shall be with the truck travel time, to the nearest second, at posted speed limit (TTT@PSL) for that segment.

$$TTT@PSL(seconds) = \frac{Segment\ Length\ (miles)}{Posted\ Speed\ Limit\ (miles\ per\ hour)} x60x60$$

(2) The Average Truck Speed shall be calculated for each reporting segment as follows:

$$Average\ Truck\ Speed\ (s) = \frac{\left[\sum_{b=1}^{T} \frac{Segment\ Length\ (s)}{Truck\ Travel\ Time_b}\right]}{T} \times 60 \times 60$$

Where,

b = a 5-minute time interval of a travel time reporting segment "s;"

s = a travel time reporting segment;

T = total number of time intervals in everyday in a full calendar year;

Segment Length (s) = length of reporting segment "s," to the nearest one thousandth of a mile;

Truck Travel Time$_b$ = travel time of trucks, for time interval "b" in the Travel Time Data Set or TTL@PSL for the reporting segment s described in paragraph (1), to the nearest second;

Average Truck Speed (s) = average annual speed of trucks travelling through the reporting segment "s," to the nearest hundredth mile per hour.

(d) Starting in 2018 and annually thereafter, State DOTs shall report the metrics, as defined in this section, in accordance with HPMS Field Manual by June 15th of each year for the previous year's measures. Specifically, the following metrics shall be reported for each reporting segment:

(1) All reporting segments of the NPMRDS shall be referenced by NPMRDS TMC. If a State DOT elects to use, in part or in whole, the equivalent data set, all reporting segment shall be referenced by HPMS location referencing standards:

(2) Truck Travel Time Reliability metric (to the nearest hundredth), including the 95th percentile truck travel time (to the nearest second) and normal (50th percentile) truck travel time (to the nearest second);

(3) Average Truck Speed metric (to the nearest hundredth mile per hour).

§ 490.613 Calculation of freight movement measures.

(a) The performance measures in § 490.607 shall be calculated in accordance with this section and used by State DOTs and MPOs to carry out the Freight Movement on the Interstate System related requirements of part 490, and by FHWA to report on performance of the Interstate System.

(b) The performance measure for the Percent of the Interstate System Mileage providing for Reliable Truck Travel Times specified in § 490.607(a) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{a=1}^{R} SL_a}{\sum_{i=1}^{T} SL_i}$$

Where,

a: An Interstate System reporting segment exhibiting Reliable Truck Travel Times. Reliable Truck Travel Times for a reporting segment is where calculated value of metric for the reporting segment, in § 490.611(b)(3), is below 1.50;

SL_a: Segment length, to the nearest thousandth of a mile, of Interstate System reporting segment "a;"

R: A total number of Interstate System reporting segments that are exhibiting Reliable Truck Travel Times ($R \in T$);

i: An Interstate System reporting segment;

SL_i: Segment length, to the nearest thousandth of a mile, of Interstate System reporting segment "i;" and

T: A total number of Interstate System reporting segments.

(c) The performance measure for the Percent of the Interstate System Mileage Uncongested as specified in § 490.607(b) shall be computed to the nearest tenth of a percent as follows:

$$100 \times \frac{\sum_{g=1}^{U} SL_g}{\sum_{i=1}^{T} SL_i}$$

Where,

g: An uncongested Interstate System reporting segment. An uncongested reporting segment is where calculated

Average Truck Speed for the reporting segment, in § 490.611(c)(2), is greater than 50.00 mph;

SL_g: Segment length, to the nearest thousandth of a mile, of Interstate System reporting segment "*g*;"

U: A total number of uncongested Interstate System reporting segments ();

i: An Interstate System reporting segment;

SL_i: Length, to the nearest thousandth of a mile, of Interstate System reporting segment "i;" and

T: Total number of Interstate System reporting segments.

■ 5. Add Subpart G to read as follows:

Subpart G—National Performance Management Measure for Assessing the Congestion Mitigation and Air Quality Improvement Program—Traffic Congestion

Sec.

490.701 Purpose.
490.703 Applicability.
490.705 Definitions.
490.707 National performance management measure for traffic congestion.
490.709 Data requirements.
490.711 Calculation of congestion metric.
490.713 Calculation of congestion measure.

§ 490.701 Purpose.

The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(5)(A) to establish performance measures for State Departments of Transportation (State DOTs) and the Metropolitan Planning Organizations (MPOs) to use in assessing traffic congestion.

§ 490.703 Applicability.

The performance measure is applicable to all of the National Highway System in urbanized areas with a population over one million that are, in all or part, designated as nonattainment or maintenance areas for ozone (O_3), carbon monoxide (CO), or particulate matter (PM_{10} and $PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).

§ 490.705 Definitions.

All definitions in § 490.101 apply to this subpart. Unless otherwise specified, the following definitions apply in this subpart:

Excessive delay means the extra amount of time spent in congested conditions defined by speed thresholds that are lower than a normal delay threshold. For the purposes of this rule, the speed threshold is 35 miles per hour (mph) on Interstates (Functional Class 1) and other freeways and expressways (Functional Class 2) and 15 mph on other principal arterials (Functional Class 3) and other roads with lower functional classifications that are included in the NHS, as defined by FHWA: HPMS Functional Classifications.[1]

§ 490.707 National performance management measure for traffic congestion.

The performance measure to assess traffic congestion for the purpose of carrying out the CMAQ program, is Annual Hours of Excessive Delay Per Capita.

§ 490.709 Data requirements.

(a) Travel time data needed to calculate the measure in § 490.707 shall come from the Travel Time Data Set, as specified in § 490.103(e).

(b) State DOTs, in coordination with MPOs, shall define reporting segments in accordance with § 490.103(f) and submit the reporting segments in accordance with § 490.103(g). Reporting segments must be contiguous so that they cover the full extent of the directional mainline highways of the NHS in the urbanized area(s).

(c) State DOTs shall develop hourly traffic volume data for each reporting segment as follows:

(1) State DOTs shall measure or estimate hourly traffic volumes for each day of the reporting year by using either paragraph (c)(1)(i) or (ii) of this section.

(i) State DOTs may use hourly traffic volume counts collected by continuous count stations and apply them to multiple reporting segments, or

(ii) State DOTs may use Annual Average Daily Traffic (AADT) reported to the HPMS to estimate hourly traffic volumes when no hourly volume counts exist. In these cases the AADT data used should be the most recently available, but no more than two years older than the reporting period (*i.e.,* if reporting for calendar year 2018, AADT should be from 2016 or 2017) and should be split to represent the appropriate direction of travel of the reporting segment.

(2) State DOTs shall assign hourly traffic volumes to each reporting segment by hour (*e.g.,* between 8:00 a.m. and 8:59 a.m.; between 9:00 a.m. and 9:59, a.m.).

(3) State DOTs shall report the methodology they use to develop hourly traffic volume estimates to FHWA no later than 60 days prior to the submittal of the first Baseline Performance Period Report.

(4) If a State DOT elects to change the methodology it reported under paragraph (c)(3) of this section, then the State DOT shall submit the changed methodology no later than 60 days prior to the submittal of next State Biennial Performance Report required in § 490.107(b).

(d) Populations of urbanized areas shall be as identified based on the most recent U.S. Decennial Census available at the time when the State DOT Baseline Performance Period Report is due to FHWA. This population shall be used for the duration of the performance period to calculate the performance measure as specified in § 490.713.

(e) Nonattainment and maintenance areas shall be identified based on the U.S. Environmental Protection Agency's designation of the area under the NAAQS at the time when the State DOT Baseline Performance Period Report is due to FHWA. These designations shall be used for the duration of the performance period.

§ 490.711 Calculation of congestion metric.

(a) The performance metric required to calculate the measure specified in § 490.707 is Total Excessive Delay (vehicle-hours). The following paragraphs explain how to calculate this metric.

(b) State DOTs shall use the following data to calculate the Total Excessive Delay (vehicle-hours) metric:

(1) Travel times of all traffic ("all vehicles" in NPMRDS nomenclature) during each five minute interval for all applicable reporting segments in the Travel Time Data Set occurring for all hours of every day and for every 24-hour period from January 1st through December 31st of the same year;

(2) The length of each applicable reporting segment, reported as required under § 490.709(b); and

(3) Hourly volume estimation for all days and for all reporting segments where excessive delay is measured, as specified in § 490.709(c).

(c) The State DOT shall calculate the "excessive delay threshold travel time" for all applicable travel time segments as follows:

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[1] *Highway Functional Classification Concepts, Criteria and Procedures: http://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf.*

$$Excessive\ Delay\ Threshold\ Travel\ Time\ (s) = \left(\frac{Travel\ Time\ Segment\ Length\ (s)}{Threshold\ Speed\ (s)}\right) \times 3{,}600$$

Where:

Excessive Delay Treshold Travel Time(s) = The time of travel, to the nearest whole second, to traverse the Travel Time Segment at which any longer measured travel times would result in excessive delay for the travel time segment "*s*;"

Travel Time Segment Length(s) = Total length of travel time segment to the nearest thousandth of a mile for travel time reporting segment "*s*;" and

Threshold Speed(s) = The speed of travel at which any slower measured speeds would result in excessive delay for travel time reporting segment "*s*."

$$Threshold\ Speed\ (s) = \begin{cases} \text{35 mph for Interstates/freeways/expressways} \\ \text{15 mph for principal arterials and all other NHS roads} \end{cases}$$

(d) State DOTs shall determine the "excessive delay" for each five minute bin of each reporting segment for every hour and every day in a calendar year as follows:

(1) The travel time segment delay (RSD) shall be calculated to the nearest whole second as follow:

RSD(s)$_b$ = *Travel Time(s)*$_b$ – *Excessive Delay Treshold Travel Time(s)*

and

RSD(s)$_b$ ≤ *300 seconds*

Where:

RSD(s)$_b$ = travel time segment delay, calculated to the nearest whole second, for a five minute bin "*b*" of travel time reporting segment "*s*" for in a day in a calendar year. *RSD(s)*$_b$ not to exceed 300 seconds;

Travel Time(s)$_b$ = a measured travel time, to the nearest second, for 5-minute time bin "*b*" recorded for travel time reporting segment "*s*;"

Excessive Delay Threshold Travel Time(s) = The maximum amount of time, to the nearest second, for a vehicle to traverse through travel time segment "*s*" before excessive delay would occur, as specified in § 490.711(c);

b = a five minute bin of a travel time reporting segment "*s*;" and

s = a travel time reporting segment.

(2) Excessive delay, the additional amount of time to traverse a travel time segment in a five minute bin as compared to the time needed to traverse the travel time segment when traveling at the excessive delay travel speed threshold, shall be calculated to the nearest thousandths of an hour as follows:

$$Excessive\ Delay(s)_b = \begin{cases} \dfrac{RSD(s)_b}{3{,}600}\ when\ RDS(s)_b \geq 0 \\ or \\ 0\ when\ RDS(s)_b < 0 \end{cases}$$

Where:

Excessive delay(s)$_b$ = Excessive delay, calculated to the nearest thousandths of an hour, for five minute bin "*b*" of travel time reporting segment "*s*;"

RSD(s)$_b$ = the calculated travel time reporting segment delay for five minute bin "*b*" of a travel time reporting segment "*s*," as described in paragraph (1) of this section;

b = a five minute bin of a travel time reporting segment "*s*;" and

s = a travel time reporting segment.

(e) State DOTs shall use the hourly traffic volumes as described in § 490.709(c) to calculate the Total Excessive Delay (vehicles-hours) metric for each reporting segment as follows:

$$Total\ Excessive\ Delay(s) = \sum_{d=1}^{TD}\left\{\sum_{h=1}^{TH}\left[\sum_{b=1}^{TB}\left(\left[Excessive\ Delay(s)_{b,h,d} \times \left(\frac{hourly\ volume(s)}{12}\right)_{h,d}\right)_b\right]_h\right\}_d$$

Where:

Total Excessive Delay (in vehicle-hours) = the sum of the excessive delay, to the nearest thousandths, for all traffic traveling through single travel time reporting segment on NHS within an urbanized area, specified in § 490.703, accumulated over the full reporting year;

s = a travel time reporting segment;

d = a day of the reporting year;

TD = total number of days in the reporting year;

h = single hour interval of the day where the first hour interval is 12:00 a.m. to 12:59 a.m.;

TH = total number of hour intervals in day "h;"

b = 5-minute bin for hour interval "h;"

TB = total number of 5-minute bins where travel times are recorded in the travel time data set for hour interval "h;"

Excessive Delay(s)$_{b,h,d}$ = calculated excessive travel time, in hundredths of an hour, for 5 minute bin (*b*), hour interval (h), day (d), and travel time segment (s), as described in paragraph d(2) of this section; and

$$\left(\frac{\text{hourly volume(s)}}{12}\right)_{h,d,s} = \text{hourly traffic volume, to the nearest tenth, for hour}$$

interval "h" and day "d" that corresponds to 5-minute bin "*b*" and travel time reporting segment "*s*" divided by 12. For example, the 9:05 a.m. to 9:10 a.m. minute bin would be assigned one twelfth of the hourly traffic volume for the 9:00 a.m. to 9:59 a.m. hour on the roadway in which travel time segment is included.

(f) Starting in 2018 and annually thereafter, State DOTs shall report Total Excessive Delay (vehicle-hours) metric (to the nearest one hundredth hour) in accordance with HPMS Field Manual by June 15th of each year for the previous year's measures. The Total Excessive Delay (vehicle-hours) metric shall be reported for each reporting segment. All reporting segments of the NPMRDS shall be referenced by NPMRDS TMC. If a State DOT elects to use, in part or in whole, the equivalent data set, all reporting segment shall be referenced by HPMS location referencing standards.

§ 490.713 Calculation of congestion measure.

(a) The performance measure in § 490.707 shall be computed in accordance with this section and shall be used by State DOTs and MPOs to carry out CMAQ Traffic Congestion performance-related requirements of part 490.

(b) The performance measure for CMAQ Traffic Congestion specified in § 490.707, Annual Hours of Excessive Delay Per Capita, shall be computed to the nearest hundredth, and by summing the "Total Excessive Delay (vehicle-hours)" metrics of all reporting segments in each of the urbanized area, specified in § 490.703, and dividing it by the population of the urbanized area to produce the measure. The equation for calculating the measure is as follows:

$$\text{Annual Hours of Excessive Delay per Capita} = \frac{\sum_{s=1}^{T} \text{Total Excessive Delay}(s)}{\text{Total Population}}$$

Where:

Annual Hours of Excessive Delay per Capita = the cumulative hours of excessive delay, to the nearest tenth, experienced by all traffic traveling through all reporting segments in the applicable urbanized area for the full reporting calendar year.

s = travel time reporting segment within an urbanized area, specified in § 490.703;

T = total number of travel time reporting segments in the applicable urbanized area;

Total Excessive Delay(s) = total hours of excessive delay in § 490.711(e) for all traffic traveling through travel time reporting segment "*s*" during the reporting year (as defined in § 490.711(f));

Total Population = the total population in the applicable urbanized area as reported by the most recent U.S. Decennial Census.

(c) Calculation for the measure, described in this section, and target establishment for the measure shall be phased-in under the requirements in §§ 490.105(e)(8)(vi) and 490.105(f)(4)(vi).

■ 8. Add Subpart H to read as follows:

Subpart H—National Performance Management Measures to Assess the Congestion Mitigation and Air Quality Improvement Program—On-Road Mobile Source Emissions

Sec.
490.801 Purpose.
490.803 Applicability.
490.805 Definitions.
490.807 National performance management measure for assessing on-road mobile source emissions for the purposes of the Congestion Mitigation and Air Quality Improvement Program.
490.809 Data requirements.
490.811 Calculation of emissions metric.
490.813 Calculation of emissions measure.

§ 490.801 Purpose.

The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(5)(B) to establish performance measures for State Departments of Transportation (State DOTs) and the Metropolitan Planning Organizations (MPOs) to use in assessing on-road mobile source emissions.

§ 490.803 Applicability.

(a) The on-road mobile source emissions performance measure is applicable to all projects financed with funds from the 23 U.S.C. 149 CMAQ program apportioned to State DOTs in areas designated as nonattainment or maintenance for ozone (O_3), carbon monoxide (CO), or particulate matter (PM_{10} and $PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).

(b) This performance measure does not apply to States and MPOs that do not contain any portions of nonattainment or maintenance areas for the criteria pollutants identified in paragraph (a) of this section.

§ 490.805 Definitions.

All definitions in § 490.101 apply to this subpart. Unless otherwise specified in this part, the following definitions apply in this part:

Donut areas mean geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains a part of any metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

Isolated rural nonattainment and maintenance areas mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or Transportation Improvement Plans (TIPs) and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

On-road mobile source means, within this rulemaking, emissions created by all projects and sources financed with funds from the 23 U.S.C. 149 CMAQ program.

§ 490.807 National performance management measure for assessing on-road mobile source emissions for the purposes of the Congestion Mitigation and Air Quality Improvement Program.

The performance measure for the purpose of carrying out the CMAQ Program and for State DOTs to use to assess on-road mobile source emissions is, "Total Emissions Reduction", which is the 2-year and 4-year cumulative reported emission reductions, for all projects funded by CMAQ funds, of each criteria pollutant and applicable precursors ($PM_{2.5}$, PM_{10}, CO, VOC, and NO_X) under the CMAQ program for which the area is designated nonattainment or maintenance.

§ 490.809 Data requirements.

(a) The data needed to calculate the Total Emission Reduction measure shall come from the CMAQ Public Access System and includes:

(1) The applicable nonattainment or maintenance area;

(2) The applicable MPO; and

(3) The emissions reduction estimated for each CMAQ funded project for each of the applicable criteria pollutants and their precursors for which the area is nonattainment or maintenance.

(b) The State DOT shall:

(1) Enter project information into the CMAQ project tracking system for each CMAQ project funded in the previous fiscal year by March 1st of the following fiscal year; and

(2) Extract the data necessary to calculate the on-road mobile source emissions measures as it appears in the CMAQ Public Access System on July 1st for projects obligated in the prior fiscal year.

(c) Nonattainment and maintenance areas shall be identified based on the effective date of U.S. Environmental Protection Agency's designations under the NAAQS in 40 CFR part 81 at the time when the State DOT Baseline Performance Period Report is due to FHWA. These designations shall be used for the duration of the performance period.

§ 490.811 Calculation of emissions metric.

(a) The metric to calculate the Total Emission Reductions measure is the conversion of Emission Reductions from kg/day to short tons per year.

(b) The Annual Tons of Emission Reductions that are predicted for each applicable project reported to the CMAQ Public Access System for each criteria pollutant or precursor for one year shall be defined as follows:

$$\mathit{Annual\ Tons\ of\ Emission\ Reductions}(p)_i = \mathit{Reductions}(p)_i \times 0.4026$$

Where:

p = criteria pollutant or precursor: $PM_{2.5}$, PM_{10},, CO, VOC, or NO_X;

i = a project that is obligated for CMAQ funding for the first time;

Reductions/p/ = estimated daily emissions reductions for a criteria pollutant or a precursor in a Federal fiscal year for which the project is obligated for CMAQ funding for the first time. This is reported in kg/day, in the first year the project is operational, to the nearest one thousandths; and

Annual Tons of Emission Reductons(p)$_i$ = total annual short tons, to the nearest one thousandths, of reduced emissions for a criteria pollutant or an applicable precursor "p" in the in the first year the project is obligated.

§ 490.813 Calculation of emissions measure.

(a) The Total Emission Reductions performance measure specified in § 490.807 shall be calculated in accordance with this section and used by State DOTs and MPOs to carry out CMAQ On-Road Mobile Source Emissions performance-related requirements of part 490.

(b) The Total Emission Reductions for each of the criteria pollutant or applicable precursor for all projects reported to the CMAQ Public Access System shall be calculated to the nearest one thousandths, as follows:

$$\mathit{Total\ Emission\ Reduction}(p) = \sum_{i=1}^{T} \mathit{Annual\ Tons\ of\ Emission\ Reductions}(p)_i$$

Where:

i = applicable projects reported in the CMAQ Public Access System for the first 2 Federal fiscal years of a performance period and for the entire performance period, as described in in § 490.105(e)(4)(i)(B);

p = criteria pollutant or applicable precursor: $PM_{2.5}$, PM_{10}, CO, VOC, or NO_X;

Annual Tons of Emission Reductons(p)$_i$ = specified metric in § 490.811(b);

T = total number of applicable projects reported to the CMAQ Public Access System for the first 2 Federal fiscal years of a performance period and for the entire performance period, as described in § 490.105(e)(4)(i)(B); and

Total Emission Reductions(p) = cumulative reductions in emissions over 2 and 4 Federal fiscal years, total annual short tons, to the nearest one thousandths, of reduced emissions for criteria pollutant or precursor "p".

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Part III

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, et al.
Business and Financial Disclosure Required by Regulation S–K; Concept Release; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 232, 239, 240 and 249

[Release No. 33–10064; 34–77599; File No. S7–06–16]

RIN 3235–AL78

Business and Financial Disclosure Required by Regulation S–K

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Commission is publishing this concept release to seek public comment on modernizing certain business and financial disclosure requirements in Regulation S–K. These disclosure requirements serve as the foundation for the business and financial disclosure in registrants' periodic reports. This concept release is part of an initiative by the Division of Corporation Finance to review the disclosure requirements applicable to registrants to consider ways to improve the requirements for the benefit of investors and registrants.

DATES: Comments should be received on or before July 21, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–06–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/concept.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Angie Kim, Special Counsel in the Office of Rulemaking, at (202) 551–3430, in the Division of Corporation Finance; 100 F Street NE., Washington, DC 20549.

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I. Introduction

Regulation S–K was adopted to foster uniform and integrated disclosure for registration statements under the Securities Act of 1933 ("Securities Act"), registration statements under the Securities Exchange Act of 1934 ("Exchange Act"), and other Exchange Act filings, including periodic and current reports.[1] Over thirty years ago, the Commission expanded and reorganized Regulation S–K to be the central repository for its non-financial statement disclosure requirements.[2] When adopting the integrated disclosure system, the Commission's goals were to reduce the costs to registrants and eliminate duplicative disclosures while continuing to provide material information.[3] In this concept release, we revisit the business and financial disclosure requirements in Regulation S–K. We seek to assess whether they continue to provide the information that investors need to make informed investment and voting decisions and whether any of our rules have become outdated or unnecessary.

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[1] *See* Item 10(a) of Regulation S–K [17 CFR 229.10].

We focus this release on business and financial disclosures that registrants provide in their periodic reports, which are a subset of the disclosure requirements in Regulation S–K.[4] We focus on these requirements because many of them have changed little since they were first adopted. We are not at this time revisiting other disclosure requirements in Regulation S–K, such as executive compensation and governance, or the required disclosures for foreign private issuers, business development companies, or other categories of registrants. Although the specific scope of this concept release is as indicated, we welcome and encourage comments on any other disclosure topics not specifically addressed in this concept release.

This release begins with a discussion of the regulatory history of the integrated disclosure system and Regulation S–K as well as an overview of prior initiatives to review and modernize our disclosure requirements. We then present the framework for our current disclosure regime and explore potential alternative approaches. We proceed to review the business and financial disclosure requirements that apply to periodic reports. We first consider what financial and business information should be required and whether any of these requirements are appropriate to scale for smaller registrants. We then explore how registrants can most effectively present this information to improve its usefulness to investors. In this release, we consider input we have received from letters submitted in response to disclosure modernization efforts[5] as well as the staff's experience with particular disclosure requirements, regulatory history and changes in the regulatory and business landscape since the rule's adoption.

Through this release, we are reviewing and seeking public comment on whether our business and financial disclosure requirements continue to elicit important information for investors and how registrants can most effectively present this information. We are specifically seeking comment on:

- Whether, and if so, how specific disclosures are important or useful to making investment and voting decisions and whether more, less or different information might be needed;
- whether, and if so how, we could revise our current requirements to enhance the information provided to investors while considering whether the action will promote efficiency, competition, and capital formation;[6]
- whether, and if so how, we could revise our requirements to enhance the protection of investors;
- whether our current requirements appropriately balance the costs of disclosure with the benefits;
- whether, and if so how, we could lower the cost to registrants of providing information to investors, including considerations such as advancements in technology and communications;
- whether and if so, how we could increase the benefits to investors and facilitate investor access to disclosure by modernizing the methods used to present, aggregate and disseminate disclosure; and
- any challenges of our current disclosure requirements and those that may result from possible regulatory responses explored in this release or suggested by commenters.

While we set forth a number of general and specific questions, we welcome comments from investors, registrants and other market participants on any other concerns related to our disclosure requirements. In addition to comments received on this release, we will consider any input from investor focus group studies or surveys, the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies.

This concept release is part of a comprehensive evaluation of the Commission's disclosure requirements recommended in the staff's Report on Review of Disclosure Requirements in Regulation S–K ("S–K Study"), which was mandated by Section 108 of the Jumpstart Our Business Startups Act ("JOBS Act").[7] Based on the S–K Study's recommendation and at the request of Commission Chair Mary Jo White,[8] Commission staff initiated a comprehensive evaluation of the type of information our rules require registrants to disclose, how this information is presented, where and how this information is disclosed and how we can leverage technology as part of these efforts (collectively, "Disclosure Effectiveness Initiative"). The overall objective of the Disclosure Effectiveness Initiative is to improve our disclosure regime for both investors and registrants.

In connection with the S–K Study[9] and the subsequent launch of the Disclosure Effectiveness Initiative,[10] we received public comments on various topics discussed in this release. Below and elsewhere throughout this release, we discuss these comments as further context for the topics under consideration. Comments received in connection with the Disclosure Effectiveness Initiative that are outside the scope of this release are not discussed here. These comment letters are being considered as part of the staff's continued evaluation of Regulation S–K from which the staff expects to make further recommendations to the Commission for consideration.

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[2] *See* Adoption of Integrated Disclosure System, Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] ("1982 Integrated Disclosure Adopting Release").

[3] *See id.*

[4] The scope of this release does not include certain disclosure requirements for information other than business and financial disclosures, such as Subpart 400, which requires disclosure about management and certain security holders as well as corporate governance matters. We also have not included offering-specific disclosure requirements under Subpart 500, which generally apply to registration statements and prospectuses but not periodic reports.

[5] *See infra* notes 9 to 10 and accompanying text.

[6] Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] requires that, whenever the Commission is engaged in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] sets forth this same requirement. *See also* Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)].

[7] Public Law 112–106, Sec. 108, 126 Stat. 306 (2012). Section 108 of the JOBS Act required the Commission to conduct a review of Regulation S–K to determine how such requirements can be updated to modernize and simplify the registration process for emerging growth companies ("EGCs"). For a further discussion of the S–K Study, *see* Section II.C.

[8] *See SEC Issues Staff Report on Public Company Disclosure* (Dec. 20, 2013), *available at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540530982.*

[9] In connection with the S–K Study, we received public comments on regulatory initiatives to be undertaken in response to the JOBS Act. *See* Comments on SEC Regulatory Initiatives Under the JOBS Act: Title I—Review of Regulation S–K, *available at http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml.*

Some of the comments received in connection with the S–K Study were specific to EGCs.

[10] To facilitate public input on the Disclosure Effectiveness Initiative, members of the public were invited to submit comments. Public comments we have received to date on the topic of Disclosure Effectiveness are available on our Web site. *See* Comments on Disclosure Effectiveness, *available at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.*

The staff is also working on recommendations for our consideration to propose specific revisions to update or simplify certain of our business and financial disclosure requirements, as required by the recently enacted Fixing America's Surface Transportation Act of 2015 ("FAST Act").[11] Those recommendations relate to specific proposals to help address "duplicative, overlapping, outdated or unnecessary" disclosure and are not specifically addressed in this concept release, which seeks to explore both general considerations and specific questions that we believe would benefit from further evaluation and input before proposing any changes to the related rules.[12]

II. Relevant History and Background

A. History of Regulation S–K

Regulation S–K

Enactment of the Securities Act and the Exchange Act resulted in the creation of two separate disclosure regimes. These disclosure regimes remained distinct for approximately thirty years and often resulted in overlapping and duplicative disclosure requirements. Regulation S–K reflects the Commission's efforts to harmonize disclosure required under both the Securities Act and the Exchange Act by creating a single repository for disclosure regulation that applies to filings by registrants under both statutes.

The current integrated disclosure system resulted from a series of efforts triggered by a 1964 amendment to the Exchange Act,[13] which added Section 12(g) to the Exchange Act and extended the Exchange Act's reporting requirements to companies meeting specified thresholds, including those that were not exchange listed.[14] In light of the Exchange Act's broadened reporting requirements, Professor Milton Cohen suggested in a seminal 1966 law review article greater coordination between the Securities Act and Exchange Act.[15] He recommended that the continuous reporting obligations under the Exchange Act serve as the foundation for corporate disclosure while relaxing or eliminating overlapping Securities Act disclosure requirements.[16]

Subsequent to the publication of this article, the Commission initiated several studies that advanced efforts to integrate the Securities Act and Exchange Act disclosure regimes. These efforts included the Disclosure Policy Study led by Commissioner Francis Wheat[17] and the report issued by the Advisory Committee on Corporate Disclosure led by former Commissioner A. A. Sommer, Jr. ("Sommer Report").[18] In 1969, the Wheat Report concurred with Cohen's proposal for a coordinated disclosure system. It recommended an enhanced degree of coordination between the disclosures required by the Securities Act and the Exchange Act and formulated specific proposals for integrating disclosure between the two Acts.[19] In 1977, the Sommer Report suggested adopting a single, integrated disclosure system and recommended developing one coordinated disclosure form.[20]

Following the Sommer Report, the Commission adopted the first version of Regulation S–K, which included only two disclosure requirements—a description of business and a description of properties.[21] While additional disclosure requirements were added in 1978 and 1980,[22] Regulation S–K was significantly expanded and reorganized in 1982 as the repository for the uniform non-financial statement disclosure requirements under both the Securities Act and Exchange Act.[23] With this expansion and reorganization, the Commission moved much of the guidance in the prior Industry Guides into Regulation S–K and amended the forms and schedules to reference requirements in Regulation S–K.[24]

Many of the disclosure requirements in Regulation S–K originated in Schedule A of the Securities Act, which lists 27 items that must be disclosed in a registration statement and prospectus.[25] Section 7 of the Securities Act provides that the registration statement shall contain the information and be accompanied by the documents specified in Schedule A, except the Commission may exercise its rulemaking authority to prescribe additional information or may permit prescribed information to be omitted as it deems necessary or appropriate in the public interest or for the protection of investors.[26] Over the years, the Commission has exercised this authority to adopt various registration forms and disclosure requirements. While many of the disclosure requirements currently in Regulation S–K originated in Schedule A, the Commission has amended Regulation S–K numerous times since its adoption.[27]

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[11] Public Law 114–94, Sec. 72002, 129 Stat. 1312 (2015).

[12] *Id.*

[13] *See, e.g., Disclosure to Investors—A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts, Policy Study,* Mar. 27, 1969, *available at http://www.sechistorical.org/museum/galleries/tbi/gogo_d.php* ("Wheat Report") (stating that one of the reasons for a broad re-examination of disclosure policy was the 1964 amendment to the Exchange Act). *See also infra* note 15.

[14] 15 U.S.C. 781(g). Congress enacted Section 12(g) of the Exchange Act in 1964, which required an issuer to register a class of securities under Section 12(g) if the securities were "held of record" by 500 or more persons and the issuer had total assets exceeding $1 million. Prior to the enactment of Section 12(g), the Exchange Act reporting requirements were applicable only to listed companies. The Commission used its authority under Section 12(h) to raise the asset threshold for Section 12(g) registration from $1 million to $3 million in 1982, $5 million in 1986 and $10 million in 1996.

As a result of amendments made by the JOBS Act and the FAST Act, Section 12(g)(1) of the Exchange Act now requires an issuer that is not a bank, bank holding company, or savings and loan holding company to register a class of equity securities if the securities are held of record by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors and the issuer has total assets exceeding $10 million. Banks, bank holding companies and savings and loan holding companies with total assets exceeding $10 million must register a class of equity securities if the securities are held of record by 2,000 or more persons. Public Law 112–106, Sec. 501, 126 Stat. 306 (2012) and Public Law 114–94, Sec. 85001, 129 Stat. 1312 (2015).

[15] *See* Milton H. Cohen, *"Truth in Securities" Revisited,* 79 Harv. L. Rev. 1340, 1350 (1966) ("With the 1934 Act now extended to thousands of additional companies by the 1964 Amendments, the need of a reexamination with an eye to coordination of the 1934 Act with the earlier one is all the greater").

[16] *See id.* at 1341–42, stating "[i]t is my thesis that the combined disclosure requirement of these statutes would have been quite different if the 1933 and 1934 Acts (the latter as extended in 1964) had been enacted in opposite order, or had been enacted as a single, integrated statute—that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosures in connection with public offerings had been faced in this setting. Accordingly, it is my plea that there now be created a new coordinated disclosure system having as its basis the continuous disclosure system of the 1934 Act and treating "1933 Act" disclosure needs on this foundation."

[17] *See supra* note 13.

[18] *See Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission,* Cmte. Print 95–29, House Cmte. On Interstate and Foreign Commerce, 95th Cong., 1st. Sess (Nov. 3, 1977) *available at http://opc-ad-ils/InmagicGenie/DocumentFolder/report%20of%20the%20advisory%20committee%20on%20corporate%20disclosure%20to%20the%20sec%2011011977.pdf.*

[19] *See generally* Wheat Report.

[20] *See* Sommer Report at 420–432.

[21] *See* Adoption of Disclosure Regulation and Amendments of Disclosure Forms and Rules, Release No. 33–5893 (Dec. 23, 1977) [42 FR 65554 (Dec. 30, 1977)] ("1977 Regulation S–K Adopting Release").

[22] *See* S–K Study at 10, footnote 27.

[23] *See id.* at 10, footnote 28.

[24] For a discussion of the Industry Guides, *see infra* notes 639 to 644 and accompanying text.

[25] 15 U.S.C. 77aa. Schedule A requires companies to provide information such as: General information about the company, its business and capital structure; information about the directors, principal officers, promoters and ten percent stockholders and remuneration of officers and directors; information about the offering; financial statements of the company and of any business to be acquired through the proceeds of the issue; and copies of agreements made with underwriters, opinions of counsel on legality of the issue, material contracts, the company's organizational documents and agreements or indentures affecting any securities offered.

B. Broad Economic Considerations

The purpose of corporate disclosure is to provide investors with information they need to make informed investment and voting decisions. Lowering information asymmetries between managers of companies and investors may enhance capital formation and the allocative efficiency of the capital markets. In particular, disclosure of information that is important for investment and voting decisions may lead to more accurate share prices, discourage fraud, heighten monitoring of the managers of companies, and increase liquidity. Effective disclosure requirements also should increase the integrity of securities markets, build investor confidence, and support the provision of capital to the market. In addition, such requirements can facilitate the coordination of registrants around consistent disclosure standards, increasing the efficiency with which investors can process the information.

There are potential drawbacks associated with disclosure requirements. Disclosure can be costly for registrants to produce and disseminate, and disclosure of certain sensitive information can result in competitive disadvantages. There is also a possibility that high levels of immaterial disclosure can obscure important information or reduce incentives for certain market participants to trade or create markets for securities. The appropriate choice of disclosure requirements therefore involves certain tradeoffs. These tradeoffs may depend on the nature of the audience for disclosure and the characteristics of registrants.

Markets are composed of a broad spectrum of investors with different information needs. Some investors may be highly sophisticated and have access to substantial resources to process and interpret data, while others may lack sophistication or have fewer resources to process and interpret data. Investors also may differ in their reliance on disclosure or on third-party analyses of disclosure. The breadth of the audience for disclosure may inform choices about what information is important to investment and voting decisions and should therefore be disclosed. The diversity of the audience for disclosure, and how different subsets of this audience access and digest information about registrants, will also affect decisions about how best to format and disseminate disclosure.

The trade-off between the benefits and costs of disclosure requirements may vary across different types of registrants. For example, to the extent that our disclosure requirements impose fixed costs, they may impose a disproportionate burden on smaller registrants. At the same time, these registrants may have relatively simple operations and thus be able to promote an understanding of their business and financial condition with less disclosure than larger, more complex registrants. Accordingly, it may be appropriate to provide disclosure accommodations for certain types of registrants, while remaining cognizant of the potential adverse impacts that reduced disclosure may have on capital formation and the allocative efficiency of the capital markets.

The benefits associated with disclosing certain items of information may be greater in some cases than in others, such as when an item of disclosure reflects an important part of one registrant's operations but an immaterial part of another's. In this context, it may be important to consider various approaches to trigger disclosure where it is more likely to be important, rather than in all cases. It may also be useful to have disclosure requirements, or guidance in fulfilling these requirements, that are specific to certain industries or other subsets of registrants. We seek to understand if disclosure requirements can be more appropriately tailored to registrants given the likely variation across registrants in the benefits and the costs of disclosing certain types of information. We discuss specific economic considerations in more detail below.

C. Prior Regulation S–K Modernization Initiatives and Studies

From time to time, the Commission has assessed its disclosure requirements. Several of these studies focused on modernizing or simplifying disclosure requirements. Other initiatives focused on different aspects of the regulatory framework, such as the securities offering process or the financial reporting system, but had the effect of raising disclosure issues for further consideration or shaping current disclosure requirements. The Disclosure Effectiveness Initiative builds upon these prior studies and initiatives.

Task Force on Disclosure Simplification

The Task Force on Disclosure Simplification ("Task Force"), comprising staff from across the Commission, was formed in 1995 to review regulations affecting capital formation with a view towards "streamlining, simplifying, and modernizing the overall regulatory scheme without compromising or diminishing important investor protections." [28] In its report to the Commission in 1996, the Task Force recommended the Commission "eliminate or modify many rules and forms, and simplify several key aspects of securities offerings." [29] Based on the Task Force's recommendations, the Commission rescinded forty-five rules and six forms and adopted other minor or technical rule changes to eliminate unnecessary requirements and to streamline the disclosure process.[30]

The Task Force also made the following recommendations on Regulation S–K:

- Streamline Item 101's description of business disclosure by eliminating duplication of quantitative information about business segments and foreign operations provided in the financial statements;

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[26] 15 U.S.C. 77g.

[27] For a comprehensive discussion of prior revisions to Regulation S–K, please see Sections II and III of the S–K Study at 8–92.

[28] *See Report of the Task Force on Disclosure Simplification, available at www.sec.gov/news/studies/smpl.htm* (Mar. 5, 1996) ("Task Force Report"). To facilitate its review, the Task Force met with issuers, investor groups, underwriters, accounting firms, law firms and other active participants in the capital markets.

[29] *See id.* stating " . . . recommendations [of the task force] roughly fall into three categories: (1) Weeding out forms and regulations that are duplicative of other requirements or have outlived their usefulness; (2) Requiring more readable and informative disclosure documents; and (3) Reducing the cost of securities offerings and increasing access of smaller companies to the securities markets."

[30] *See* Phase One Recommendations of Task Force on Disclosure Simplification, Release No. 33–7300 (May 31, 1996) [61 FR 30397 (June 14, 1996)] ("Phase One Recommendations of Task Force on Disclosure Simplification Release"). For example, changes to Regulation S–K included eliminating four infrequently used (or otherwise already available) items from the list of required exhibits in Item 601(b) (opinion regarding discount on capital shares, opinion regarding liquidation preference, material foreign patents, and information from reports furnished to state insurance regulatory authorities).

See also Phase Two Recommendations of Task Force on Disclosure Simplification, Release No. 33–7431 (July 18, 1997) [62 FR 43581 (Aug. 14, 1997)] ("Phase Two Recommendations of Task Force on Disclosure Simplification Release") (rescinding two forms and one rule and amending a number of rules and forms). The Commission further implemented certain of the recommendations in the Task Force Report relating to accounting disclosure rules that were identified as being largely duplicative of U.S. GAAP or other Commission rules.

- revise Item 102's description of property disclosure to elicit "more meaningful and material disclosure;" and
- eliminate Item 103's instruction to replace the $100,000 standard with a general materiality standard for certain environmental legal proceedings to ensure registrants will not be required to disclose non-material information.[31]

While the Commission made a number of changes in response to the Task Force recommendations, the three items identified above were not adopted by the Commission. We revisit some of these issues in the questions presented below.

Report of the Advisory Committee on the Capital Formation and Regulatory Process

Also in 1995, the Commission established the Advisory Committee on the Capital Formation and Regulatory Processes ("1995 Advisory Committee") to advise on, among other things, the regulatory process and disclosure requirements for public offerings. The 1995 Advisory Committee's primary recommendation was implementing a system of "company registration." [32]

Noting the Task Force Report, the 1995 Advisory Committee did not focus on specific line-item disclosure requirements but suggested disclosure enhancements as part of its recommendations for a system of "company registration." These enhancements included a management certification to the Commission for all periodic and current reports, a management's report to the audit committee to be filed as an exhibit to the Form 10–K, expansion of current reporting obligations on Form 8–K and a risk factor disclosure requirement in Form 10–K.[33]

After receiving reports from both the Task Force and the 1995 Advisory Committee, the Commission issued a concept release on regulation of the securities offering process and also sought input on the 1995 Advisory Committee's proposed disclosure enhancements.[34]

Plain English

In 1998, the Commission adopted rules intended to improve the readability of prospectuses by promoting clear, concise and understandable disclosure ("Plain English Rules").[35] These rules required registrants to write the cover page, summary and risk factors section of prospectuses in plain English [36] and were extended to Exchange Act reports in 2005.[37]

Advisory Committee on Improvements to Financial Reporting

In 2007, the Commission chartered the Advisory Committee on Improvements to Financial Reporting ("CIFiR Advisory Committee") to examine the U.S. financial reporting system.[38] While the CIFiR Advisory Committee did not recommend specific changes to Regulation S–K, several of its suggestions sought to improve the usefulness of information in periodic reports.[39] The Commission adopted some of these suggestions, which included updating the Commission's interpretive guidance on use of electronic media for disseminating information on a registrant's financial performance [40] and adopting rules to require filing of interactive data-tagged financial statements.[41]

JOBS Act Report on Review of Disclosure Requirements in Regulation S–K

The JOBS Act required the Commission to review Regulation S–K to determine how its disclosure requirements can be updated to modernize and simplify the registration process for EGCs.[42] In response to this mandate, Commission staff published the S–K Study in December 2013. Although the Congressional mandate focused on EGCs, the report was intended to facilitate the improvement of disclosure requirements applicable to companies at all stages of development.[43]

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[31] The Task Force also generally recommended adjusting certain dollar thresholds in Regulation S–K and Regulation S–X for inflation since the time of their adoption. The Task Force cited, among other items, the $50,000 threshold in Item 509 of Regulation S–K (relating to disclosure of payments to experts and counsel) [17 CFR 229.509] and the $100,000 threshold in Rule 3–11 of Regulation S–X (relating to the definition of an inactive registrant) [17 CFR 210.3–11]. *See* Task Force Report.

[32] Under a "company registration" system, a company would, on a one-time basis, file a registration statement (deemed effective immediately) that includes information similar to that currently provided in an initial short-form shelf registration statement. This registration statement could then be used for all types of securities and all types of offerings. All current and future Exchange Act reports would be incorporated by reference into that registration statement, and around the time of an offering, transactional and updating disclosures would be filed with the Commission and incorporated into the registration statement. As part of this "company registration" system, companies would be required to adopt certain disclosure enhancements (and encouraged to adopt others) that seek to improve the quality and timeliness of disclosure provided to investors and the markets. *See* Securities Act Concepts and Their Effects on Capital Formation, Release No. 33–7314 (July 25, 1996) [61 FR 40044 (July 31, 1996)] ("Securities Act Concept Release").

[33] *See Report of The Advisory Committee on the Capital Formation and Regulatory Processes* (July 24, 1996), *available at http://www.sec.gov/news/studies/capform.htm.*

[34] *See* the Securities Act Concept Release. Many of the issues raised in the concept release were revisited in the Commission's 1998 proposal to modernize the securities offering process (known as the "Aircraft Carrier" release), and in the Commission's 2005 Securities Offering Reform rulemaking. Some of the proposals from the Aircraft Carrier release were later adopted. For example, the Aircraft Carrier release recommended inclusion of risk factor disclosure in Exchange Act registration statements and annual reports. This recommendation was adopted as part of Securities Offering Reform. *See* The Regulation of Securities Offerings, Release No. 33–7606A (Nov. 17, 1998) [63 FR 67174 (Dec. 4, 1998)] ("Aircraft Carrier Release") and Securities Offering Reform, Release No. 33–8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] ("Securities Offering Reform Release").

[35] *See* Plain English Disclosure, Release No. 33–7497 (Jan. 28, 1998) [63 FR 6370 (Feb. 6, 1998)] ("Plain English Disclosure Adopting Release").

[36] *Id.*

[37] *See* Securities Offering Reform Release. As part of the Securities Offering Reform Release, Form 10–K was amended to require risk factor disclosure to be written in accordance with the same Plain English Rules that apply to risk factor disclosure in Securities Act registration statements. *See also* Part I, Item 1A of Form 10–K.

[38] The dual goals of the CIFiR Advisory Committee were "to examine the U.S. financial reporting system in order to make recommendations intended to increase the usefulness of financial information to investors, while reducing the complexity of the financial reporting system to investors, preparers, and auditors." *See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* (Aug. 1, 2008), ("CIFiR Advisory Committee Report"), *available at http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf.*

[39] *See* CIFiR Advisory Committee Report (stating that "[i]ncreasing the usefulness of information in SEC reports" was one of five themes underlying the CIFiR Advisory Committee's recommendations).

[40] In 2008, the Commission published interpretive guidance on the use of company Web sites as a means for companies to communicate and provide information to investors in compliance with the federal securities laws and, in particular, the Exchange Act. *See* Commission Guidance on the Use of Company Web sites, Release No. 34–58288 (Aug. 1, 2008) [73 FR 45862 (Aug. 7, 2008)] ("2008 Web site Guidance"). When it published the 2008 Web site Guidance, the Commission noted that the guidance was prompted, in part, by the CIFiR Advisory Committee's efforts.

[41] In 2008, the Commission announced the 21st Century Disclosure Initiative, with the goal of preparing a plan for future action to modernize the Commission's disclosure system. The Initiative's report, issued in 2009, recommended a new disclosure system in which interactive data would replace plain-text disclosure documents while retaining the substantive content and filing schedule of the current system. *See 21st Century Disclosure Initiative: Staff Report, Toward Greater Transparency: Modernizing the Securities and Exchange Commission's Disclosure System* (Jan. 2009), *available at http://www.sec.gov/spotlight/disclosureinitiative/report.pdf.*

The Commission adopted rules in 2009 requiring companies to provide financial statement information in interactive data format using the eXtensible Business Reporting Language ("XBRL") format. *See* Interactive Data to Improve Financial Reporting, Release No. 33–9002 (Jan. 20, 2009) [74 FR 6776 (Feb. 10, 2009)] ("Interactive Data Release"). This adopting release notes the CIFiR Advisory Committee's recommendation to require filing of interactive data-tagged financial statements.

[42] Public Law 112–106, Sec. 108, 126 Stat. 306 (2012). For a discussion of EGCs, including the definition of "emerging growth company," see Section IV.H.1.

The S–K Study recommended a comprehensive review of disclosure requirements in the Commission's rules and forms, including Regulations S–K and S–X, and identified specific areas for further review.[44] It also recommended the Commission consider the following principles when reviewing and evaluating changes to disclosure requirements:

- Improving and maintaining the informativeness of disclosure;
- historical objectives of the rule and their continued or recurring relevance;
- whether the required information is available on a non-discriminatory basis from reliable sources and, if so, any costs or benefits from obtaining the information other than from the registrant;
- administrative and compliance costs of the requirements;
- any competitive or economic costs of disclosing proprietary information;
- maintenance of the Commission's ability to conduct an effective enforcement program and deter fraud; and
- importance of maintaining investor confidence in the reliability of registrant information, in order to, among other things, encourage capital formation.[45]

FAST Act Disclosure Modernization and Simplification

Under the FAST Act,[46] the Commission is required to carry out a study to determine how best to modernize and simplify the disclosure requirements in Regulation S–K and to propose revisions to those requirements.[47] The FAST Act requires that the study of Regulation S–K:

- Emphasize a company-by-company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and
- evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information.

In conducting this study, the Commission is required to consult with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies and to issue a report of findings and recommendations to Congress.[48] The FAST Act also requires the Commission to revise Regulation S–K to further scale or eliminate requirements to reduce the burden on EGCs, accelerated filers, smaller reporting companies ("SRCs"), and other smaller issuers, while still providing all material information to investors, and to eliminate duplicative, overlapping, outdated or superseded provisions.[49]

Consistent with the S–K Study's recommendations and the FAST Act mandates, and in furtherance of the Commission's prior modernization studies and initiatives, we seek to evaluate components of our disclosure framework and revisit certain of our business and financial disclosure requirements to assess whether they continue to provide investors with information that is important to making informed investment and voting decisions. We also seek to evaluate whether current disclosure requirements should be revised to include different formats to facilitate the readability and navigability of disclosure, which we discuss in Section V of the release.

III. Disclosure Framework

A. Basis for Our Disclosure Requirements

The Securities Act and the Exchange Act authorize the Commission to promulgate rules for registrant disclosure as necessary or appropriate in the public interest or for the protection of investors.[50] The Commission has used this authority to require disclosure of information it believes is important to investors in both registration statements for public offerings and in ongoing reports.

1. Statutory Mandates

The Securities Act and Exchange Act

A central goal of the federal securities laws is full and fair disclosure.[51] In enacting these laws, Congress recognized that investors must have access to accurate information important to making investment and voting decisions in order for the financial markets to function effectively. Thus, our disclosure rules are intended not only to protect investors but also to facilitate capital formation and maintain fair, orderly and efficient capital markets.

Schedule A of the Securities Act sets forth certain items of disclosure to be included in registration statements filed in public offerings and provides the basis for many of the disclosure requirements currently in Regulation S–K. Items in Schedule A are largely financial in nature and were intended to help investors assess a security's value. According to the House Report that preceded the Securities Act:

> The items required to be disclosed . . . are items indispensable to any accurate judgment upon the value of a security . . . The type of information required to be disclosed is of a character comparable to that demanded by competent bankers from their borrowers, and has been worked out in light of these and other requirements. They are . . . adequate to bring into full glare of publicity those elements of real and unreal values which may lie behind a security.[52]

The Exchange Act requires similar business and financial information to be disclosed in Exchange Act registration statements and periodic reports.[53]

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[43] *See* S–K Study at 4.

[44] *See id* at 92–104. The S–K Study identified four issues for further study: (1) Generally, any recommended revisions should emphasize a principles-based approach as an overarching component of the disclosure framework while preserving the benefits of a rules-based system; (2) any review of the disclosure requirements should evaluate the appropriateness of current scaled disclosure requirements and consider whether further scaling is appropriate for EGCs or other categories of companies; (3) any review of the disclosure requirements should evaluate methods of information delivery and presentation, both through EDGAR and other means; and (4) any review of disclosure requirements should consider ways to present information to improve the readability and navigability of disclosure and explore methods for discouraging repetition and disclosure of immaterial information. As to this fourth issue, the S–K Study suggested reevaluating quantitative thresholds and other materiality standards in Regulation S–K as well as reassessing requirements for information that is readily accessible, such as historical stock price information. *Id.* at 97–98.

[45] *See id.* at 94–95.

[46] Public Law 114–94, 129 Stat. 1312 (2015).

[47] Public Law 114–94, Sec. 72003, 129 Stat. 1312 (2015).

[48] *Id.*

[49] Public Law 114–94, Sec. 72002, 129 Stat. 1312 (2015). The required revisions would not apply to provisions for which the Commission determines that further study is necessary to determine their efficacy.

[50] *See generally,* Sections 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77g(a)(10), 77j; and 77s(a)]; and Sections 3(b), 12, 13, 14, 15(d), and 23(a) of the Exchange Act [15 U.S.C. 78c(b), 78*l*, 78m(a), 78n(a), 78o(d), and 78w(a)].

[51] *See* Preamble of the Securities Act (stating it is an Act to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.). In enacting the mandatory disclosure system under the Exchange Act, Congress sought to promote complete and accurate information in the secondary trading markets. *See* S. Rep. No. 73–1455, 73rd Cong., 2nd Sess., 1934 at 68 (stating "[o]ne of the prime concerns of the exchanges should be to make available to the public, honest, complete, and correct information regarding the securities listed") and H.R. Rep. No. 73–1383, 73rd Cong., 2nd Sess., 1934 at 11 (stating "[t]here cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.").

[52] H.R Rep. No. 73–85, 73rd Cong., 1st Sess., 1933.

In addition to mandating certain disclosure requirements, the Securities Act and the Exchange Act grant the Commission authority to modify and supplement these requirements as necessary or appropriate to implement the purpose of the statutes.[54] Moreover, whenever it is engaged in rulemaking and is required to consider whether the action is necessary or appropriate in the public interest, the Commission must consider whether the action will promote efficiency, competition, and capital formation.[55]

Business and Financial Legislation

From time to time, Congress has introduced additional disclosure requirements through other statutory mandates. Recent mandates have focused on corporate responsibility, corporate governance and providing enhanced business and financial information to investors. The Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act")[56] mandated numerous changes to strengthen the accountability of public companies for their financial disclosure and required substantial Commission rulemaking to implement its provisions, many of which resulted in additions to Regulation S–K.[57] In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[58] required the Commission to adopt an array of disclosure provisions on corporate governance, executive compensation and specialized disclosure.[59]

Other Legislation

In some instances, Congress has mandated disclosure that is not necessarily financial in nature. These mandates have ranged from broad policy considerations to prescriptive directives. For example, under the National Environmental Policy Act of 1969 ("NEPA"),[60] Congress required all federal agencies to include consideration of the environment in regulatory action. In response to this mandate, the Commission adopted environmental compliance and litigation disclosure requirements.[61] Similarly, Section 1503 of the Dodd-Frank Act required registrants to include information about mine safety and health in their periodic reports. Although the disclosure requirements in Section 1503 were self-executing,[62] the Act authorized the Commission to issue such rules or regulations as necessary for the protection of investors and to carry out the purposes of Section 1503.[63] To facilitate consistent compliance, the Commission adopted rules to codify the statutory disclosure requirements.[64] More recently, the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSHRA") requires registrants to disclose certain business activities relating to Iran in their periodic reports.[65]

2. Commission Responses to Market Developments

Our disclosure regime includes requirements that we have adopted in response to market developments or advancements in technology. In response to the disorderly markets and damage to investors caused by the hot issue securities markets between 1967 and 1971, the Commission initiated hearings to determine the adequacy of existing disclosure requirements[66] and adopted new disclosure requirements to elicit more meaningful information concerning all registrants and to communicate more effectively the economic realities of new registrants.[67] Similarly, in 1994 in response to significant and sometimes unexpected losses in market risk sensitive instruments due to, among other things, changes in interest rates, foreign currency exchange rates and commodity prices, the Commission adopted Item 305 (quantitative and qualitative disclosures about market risk).[68]

Significant advancements in technology have also prompted some of our disclosure requirements. The

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[53] *See* Section 12(b)(1)(A) of the Exchange Act [15 U.S.C. 78l].

[54] *See, e.g.,* Sections 19(a) and 28 of the Securities Act and Sections 3(b), 23(a)(1) and 36(a)(1) of the Exchange Act. [15 U.S.C. 77s(a), 15 U.S.C. 77z–3] and [15 U.S.C. 78c(b), 15 U.S.C. 78w(a)(1), 15 U.S.C. 78mm(a)(1)]. Section 19(a) of the Securities Act and Section 23(a)(1) of the Exchange Act grant the Commission authority to make such rules and regulations as may be necessary to carry out the provisions of each title; Section 3(b) of the Exchange Act provides that the Commission shall have power to define technical, trade, accounting, and other terms used in the Exchange Act, consistently with the provisions and purposes of the Exchange Act; Section 28 of the Securities Act and Section 36(a)(1) of the Exchange Act provide that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of each title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[55] *See, e.g.,* Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)]. *See also* Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)].

[56] Public Law 107–204, 116 Stat. 745 (2002).

[57] *See* S–K Study at 21–23, footnotes 57–62 and corresponding text for a discussion of additions made to Regulation S–K as a result of the Sarbanes-Oxley Act.

[58] Public Law 111–203, 124 Stat. 1376 (2010).

[59] *See* S–K Study at 28–29, footnotes 73–77 and corresponding text for a discussion of provisions in the Dodd-Frank Act that impact requirements in Regulation S–K.

[60] 42 U.S.C. 4321–4347.

[61] As a result of NEPA, the Commission issued an interpretive release in 1971 alerting companies to potential disclosure obligations that could arise from material environmental litigation and the material effects of compliance with environmental laws. The Commission later adopted more specific disclosure requirements relating to these matters and, in 1976, the Commission amended its forms to require disclosure of any material estimated capital expenditures for environmental control facilities.

See Disclosures Pertaining to Matters Involving the Environment and Civil Rights, Release No. 33–5170 (July 19, 1971) [36 FR 13989 (July 29, 1971)], Disclosure with Respect to Compliance with Environmental Requirements and Other Matters, Release No. 33–5386 (April 20, 1973) [38 FR 12100 (May 9, 1973)], Disclosure of Environmental and Other Socially Significant Matters, Release No. 33–5569 (Feb. 11, 1975) [40 FR 7013 (Feb. 18, 1975)] ("Notice of Public Proceedings on Environmental Disclosure Release"), Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure, Release No. 33–5704 (May 6, 1976) [41 FR 21632 (May 27, 1976)] ("1976 Environmental Release"), *Natural Resources Defense Council et al.,* v. *SEC,* 389 F. Supp. 689 (D.D.C. 1974) ("Natural Resources Defense Council").

[62] *See* Section 1503(f) of the Dodd-Frank Act. The disclosure requirements took effect 30 days after enactment of the Act.

[63] *Id.* at Section 1503(d)(2).

[64] *See* Mine Safety Disclosure, Release No. 33–9286 (Dec. 21, 2011) [76 FR 81762 (Dec. 28, 2011)] ("Mine Safety Disclosure Release").

[65] Public Law 112–158, 126 Stat. 1214 (2012). Section 219 of ITRSHRA amended Section 13 of the Exchange Act to add subsection (r). This subsection requires a company that files annual and quarterly reports under Section 13(a) of the Exchange Act to provide disclosure if, during the reporting period, it or any of its affiliates knowingly engaged in certain specified activities involving contacts with or support for Iran or other identified persons involved in terrorism or the creation of weapons of mass destruction. ITRSHRA was self-executing and required no substantive rulemaking by the Commission.

[66] Hot issues result when the price of a new issuance of securities rises to a substantial premium over the initial offering price immediately or soon after the securities are first distributed to the public. In 1967–1971, the new issues markets experienced a resurgence. *See Report of the Securities and Exchange Commission Concerning the Hot Issues Markets,* August 1984, *available at http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1980/1984_0801_SECHotIssuesT.pdf.* Between 1968 and 1970, the value of stocks traded on national securities exchanges fell a total of $78.8 billion, from $759.5 billion to $680.7 billion. *See* Securities and Exchange Commission, Thirty-Seventh Annual Report, appendix Table 5 at 221 (1971) *available at https://www.sec.gov/about/annual_report/1971.pdf.*

[67] *See* New Ventures, Meaningful Disclosure, Release No. 33–5395 (June 1, 1973) [38 FR 17202 (June 29, 1973)] ("Hot Issues Adopting Release").

[68] *See* Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments, Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044 (Feb. 10, 1997)] ("Disclosure of Market Risk Sensitive Instruments Release").

Commission's efforts in Securities Offering Reform recognized the impact of technology on market demand for more timely corporate disclosure and the ability of issuers to capture, process, and disseminate this information.[69] Similarly, modernization of our oil and gas rules was intended to update oil and gas disclosure requirements to align them with current practices and changes in technology.[70]

We are considering changes to our disclosure requirements and seeking public input on how our disclosure requirements could be improved for the benefit of investors and registrants and whether the requirements could be revised to adapt to future changes in market conditions and advancements in technology. We also are seeking input on the utility of mechanisms such as sunset provisions or temporary rules.

a. Comments Received

S–K Study. One commenter stated that a sunset provision would require the Commission to consider changes in the economic, business and regulatory landscape in assessing whether new disclosure requirements should be made permanent.[71] For significant new disclosure requirements, this commenter suggested a sunset provision of five or ten years and that formal Commission action should be required to indefinitely extend or modify any significant new disclosure requirement.

Disclosure Effectiveness Initiative. We received a few comment letters that discussed potential regulatory mechanisms to review and update our disclosure requirements.[72] To determine the continuing need for disclosures in light of the then current economic, business and regulatory landscape, one commenter suggested a formal, post-adoption review process for significant new disclosure requirements.[73] This review process, or "sunset review," would require formal Commission action to make a new disclosure requirement permanent. Another commenter recommended that the Commission develop a mechanism to timely update disclosure requirements to address new topical issues and to delete existing disclosure when the informational value for investors is diminished.[74] One commenter generally recommended sunset rules and finding a means to evaluate user demand and disclosure effectiveness for potentially outdated requirements.[75]

b. Discussion

When adopting disclosure requirements that have departed from traditional disclosure concepts, the Commission has historically taken an incremental approach to change by first adopting modest revisions and then expanding their application after observing and evaluating the rules' effectiveness. For example, the initial adoption of simplified registration and reporting requirements for smaller businesses on Form S–18 were "in the nature of an experiment"[76] and a departure from traditional disclosure concepts.[77] After observing relative, widespread acceptance of Form S–18 and the absence of significant disclosure or enforcement problems, the Commission expanded the form's availability,[78] and it eventually served as a model for our current system of scaled disclosure for SRCs.[79]

The Commission has, on occasion, adopted temporary rules or rules with automatic sunset provisions to better assess the effect of or necessity for a particular rule before adopting the rule on a permanent basis. For example, Securities Act Rule 415, which permits delayed and continuous offerings under certain circumstances, was initially adopted on a temporary basis for a period of nine months during which the Commission monitored the operation and impact of the new rule.[80] Following public hearings and comment on Rule 415, the Commission determined additional experience with the rule was necessary to study its operation and impact[81] and extended the temporary nature of this rule.[82] The Commission permanently adopted Rule 415 following 18 months of monitoring the operation and impact of the rule.[83]

While the Commission acted to permanently adopt Rule 415, it has allowed other temporary rules to expire. The Commission adopted on a temporary basis Securities Act Rules 702 and 703. Rule 702 required the filing of a Form 701 after sales under Rule 701 exceeded a particular threshold. Rule 703 disqualified registrants from relying on the Rule 701 exemption from registration where the registrant failed to make the filing required by Rule 702.[84] In adopting Rules 702 and 703, the Commission noted the importance of monitoring new exemptive provisions and stated that it would use Form 701 to "assess the utility of the exemption and, oversee any abuses."[85] The Commission did not extend Rules 702 and 703 based on its belief that the sunset of these rules had not compromised investor interests and that their reinstitution of the rules would serve little purpose.[86]

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[69] *See* Aircraft Carrier Release; Securities Offering Reform Release.

[70] *See* Modernization of Oil and Gas Reporting, Release No. 33–8995 (Dec. 31, 2008) [74 FR 2157 (Jan. 14, 2009)] ("Oil and Gas Release").

[71] *See* letter from Ernst & Young (Sept. 11, 2012) ("Ernst & Young 1").

[72] *See, e.g.,* letters from the Society of Corporate Secretaries and Governance Professionals (Sept.10, 2014) ("SCSGP"), Securities Industry and Financial Markets Association (Oct. 13, 2014) ("SIFMA"), and letter and articles referenced therein from Arthur J. Radin (May 29, 2015) ("A. Radin").

[73] *See* SCSGP. This commenter also suggested that the staff issue "closing guidance" when topics on which the staff had previously focused are no longer areas of primary concern. The commenter cited 2003 MD&A guidance on disclosure of critical accounting policies estimates as an example of guidance that could be considered closed. *See* Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation, Release No. 33–8350 (Dec. 19, 2003) ("2003 MD&A Interpretive Release") [68 FR 75056 (Dec. 29, 2003)]. This commenter stated "it is not clear that investors are unaware of the uncertainties associated with the methods, assumptions and estimates underlying a company's critical accounting measurements."

[74] *See* SIFMA. This commenter did not propose a particular mechanism that the Commission should use.

[75] *See* A. Radin.

[76] *See* Simplified Registration and Reporting Requirements for Small Issuers, Release No. 33–6049 (Apr. 3, 1979) [44 FR 21562 (Apr. 10, 1979)] ("Form S–18 Release") at 21564.

[77] *Id.* at 21562 ("The Commission will monitor closely the use of Form S–18 for an appropriate period . . .").

[78] *See* Availability of Simplified Registration Form to Certain Mining Companies, Release No. 33–6299 (Mar. 27, 1981) [46 FR 18947 (Mar. 27, 1981)]. *See also* Revisions to the Optional Form for the Registration of Securities to Be Sold to the Public by the Issuer for an Aggregate Cash Price Not To Exceed $5,000,000, Release No. 33–6406 (June 4, 1982) [47 FR 25126 (June 10, 1982)] (expanding Form S–18's availability to non-corporate registrants and registrants engaged, or to be engaged, in oil and gas related operations).

[79] *See* Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] ("SRC Adopting Release"). In adopting the current scaled disclosure regime, the Commission stated "[t]he amendments that we are adopting address the need to revisit and adjust the Commission's small company policies to reflect changes in our securities markets as well as changes to the regulatory landscape since 1992, when the Commission first adopted an integrated scaled disclosure system for small business in Regulation S–B. The Commission adopted Regulation S–B and its associated Forms SB–1 and SB–2 based upon the success of Form S–18 . . ."

[80] *See* 1982 Integrated Disclosure Adopting Release.

[81] *See* Delayed or Continuous Offering and Sale of Securities, Release No. 33–6423 (Sept. 2, 1982) [47 FR 39799 (Sept. 10, 1982)].

[82] *Id.* In June 1983, the Commission published the shelf registration rule for comment again in order to provide all interested parties another opportunity to share their views and experience under the Rule before the Commission made its final determination. *See* Delayed or Continuous Offering and Sale of Securities, Release No. 33–6470, (June 9. 1983) [48 FR 27768 (June 17, 1983)].

[83] *See* Shelf Registration, Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889 (Nov. 23, 1983)].

[84] *See* Compensatory Benefit Plans and Contracts, Release No. 33–6768 (Apr. 14, 1988) [53 FR 12918 (Apr. 20, 1988)] (adopting Rule 701, an exemption from registration for certain offers and sales made pursuant to the terms of compensatory benefit plans or written compensation agreements for issuers that are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, and adopting rules 702 and 703 on a temporary basis of five years).

Even in the absence of a temporary rule or sunset provision, the Commission has undertaken efforts to study the effects of new rules or amendments. The Commission uses these studies to guide future amendments or rulemaking. For example, our staff has examined the effects on capital formation through private placements after adoption of amendments to Regulation D in accordance with the JOBS Act.[87] In adopting amendments to Rule 506 of Regulation D[88] to eliminate the prohibition against general solicitation for a subset of Rule 506 offerings, the Commission stated that the staff will monitor developments in the market for these offerings.[89] In addition, in connection with recently adopted amendments to Regulation A, an exemption from registration for smaller issues of securities, and the adoption of Regulation Crowdfunding, a new exemption for smaller securities offerings using the Internet through crowdfunding, the Commission stated, in each case, that the staff will study and submit a report to the Commission on the impact of the regulation on capital formation and investor protection.[90]

Requiring affirmative Commission action to extend or make permanent certain requirements, the utility of which may change over time, could require us to more frequently consider the effectiveness of our requirements. Alternatively, the Commission could commit to studying the impact of certain rule changes on a specified schedule, without making the rules temporary or applying automatic sunset provisions. Any such review would be in addition to the periodic review currently required by the Regulatory Flexibility Act ("RFA"),[91] under which the Commission reviews its rules that have a significant economic impact on a substantial number of small entities within ten years of their publication as final rules.[92] These approaches would, however, require significant Commission resources and could compete with other Commission priorities.

c. Request for Comment

1. Should the Commission consider including automatic sunset provisions in new disclosure requirements? If so, what types of disclosure requirements should include these provisions? What factors should we consider in identifying them? What would be an appropriate length of time for any sunset provisions? Would this length of time vary with the nature of the rule in question?

2. What are the advantages and disadvantages of automatic sunset provisions? Would automatic sunset provisions result in unnecessary regulatory uncertainty for investors or registrants?

3. How would the use of automatic sunset provisions affect registrants, investors and other users of disclosure? Would registrants, investors or other users incur increased costs associated with the use of automatic sunset provisions?

4. Should we consider requiring the staff to study and report to the Commission on the impact of new disclosure requirements when adopting them, in addition to the review the Commission performs under the RFA? For what type of disclosure requirements would such an approach be appropriate? What are the advantages and disadvantages of such a study and report on a new rule?

5. Are there other ways our disclosure requirements could be revised to adapt more easily to future market changes and technological advancements?

B. Nature of Our Disclosure Requirements

The concept of materiality has been described as "the cornerstone" of the disclosure system established by the federal securities laws.[93] Schedule A to the Securities Act identifies certain categories of information that are generally viewed as material to investors.[94] Those categories are incorporated and expanded upon in the categories of information that registrants are required to disclose under Regulation S–K.

In creating and implementing our system of integrated disclosure, identification of material information was one of two principal objectives. In the 1982 Integrated Disclosure Adopting Release, the Commission stated:

> The Commission's program to integrate the disclosure systems has focused on two principal objectives: First, a comprehensive evaluation of the disclosure policies and procedures under both Acts to identify the information which is material to security holders and investors in both the distribution process and the trading markets . . . and, second, a determination of the circumstances under which information should be disseminated to security holders, investors and the marketplace.[95]

The Commission adopted line-item requirements in Regulation S–K and its predecessors to provide investors with specific disclosure within broad categories of material information.[96] Through its disclosure requirements, the Commission has adopted different approaches to guide registrants in evaluating materiality for purposes of disclosure, including in some cases using quantitative thresholds to address uncertainty in the application of materiality.

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[85] *See* Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015 (Jan. 30, 1987)] at 3021.

[86] *See* Phase One Recommendations of Task Force on Disclosure Simplification Release.

[87] Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2014*, Oct. 2015, *available at https://www.sec.gov/dera/staff-papers/white-papers/unregistered-offering10-2015.pdf.*

[88] 17 CFR 230.506.

[89] *See* Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33–9415 (July 20. 2013) [78 FR 44771 (July 24, 2013)].

[90] *See* Amendments to Regulation A, Release No. 33–9741 (Mar. 25, 2015) [80 FR 21805 (Apr. 20, 2015)] ("2015 Regulation A Release"); *See* Crowdfunding, Release No. 33–9974 (Oct. 30, 2015) [80 FR 71387 (Nov. 16, 2015)] ("Crowdfunding Adopting Release"). When proposing the crowdfunding rules, the Commission directed the staff to develop a work plan to review and monitor use of the crowdfunding rules, focusing on the types of issuers using the exemption, level of compliance by issuers and intermediaries, and whether the exemption is promoting new capital formation while providing key protections for investors. *See* Crowdfunding, Release No. 33–9470 (Oct. 23, 2013) [78 FR 66427 (Nov. 5, 2013)].

[91] [5 U.S.C. 610(a)].

[92] Each year, since 1981, the Commission provides the public with notice that these rules are scheduled for review and invites public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities. As a matter of policy, the Commission reviews all final rules that are published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. *See, e.g.*, List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act, Release No. 33–9965 (Oct. 22, 2015) [80 FR 65973 (Oct. 28, 2015)]. In the past, the Commission has received little or no comment on the rules that it publishes for review.

[93] *See* Sommer Report at 320.

[94] *See id.* at 324.

[95] *See* 1982 Integrated Disclosure Adopting Release at 11382. *See also* Proposed Comprehensive Revision to System for Registration of Securities of Securities Offerings, Rel. No. 33–6235 (Sept. 2, 1980) [45 FR 63693 (Sept. 25, 1980)] ("1980 Proposed Revisions") at 63694. This proposing release states "[t]he shape of the [Commission's integrated disclosure] program will be influenced by the answer to two fundamental questions: (1) What information is material to investment decisions in the context of public offerings of securities; and (2) Under what circumstances and in what form should such material information be disseminated and made available by companies making public offerings of securities to the various participants in the capital market system? The task of identifying what information is material to investment and voting decisions is a continuing one in the field of securities regulation."

[96] *See* Sommer Report at 324.

1. Principles-Based and Prescriptive Disclosure Requirements

Principles-based disclosure requirements. Many of our rules require disclosure when information is material to investors.[97] These rules rely on a registrant's management to evaluate the significance of information in the context of the registrant's overall business and financial circumstances and determine whether disclosure is necessary.[98] The requirements are often referred to as "principles-based" because they articulate a disclosure objective and look to management to exercise judgment in satisfying that objective.[99]

For example, Item 303(a)(2) requires registrants to disclose material commitments for capital expenditures, known material trends in the registrant's capital resources, and expected material changes in the mix and relative cost of such resources.[100] Similarly, Item 101(c)(1)(xi) requires registrants to disclose the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities, if material.[101]

Prescriptive disclosure requirements. Some of our rules employ objective, quantitative thresholds to identify when disclosure is required, or require registrants to disclose information in all cases. These requirements are sometimes referred to as "prescriptive" or "rules-based" because they rely on bright-line tests rather than management's judgment to determine when disclosure is required.

For example, disclosure requirements specific to environmental proceedings in Item 103 enumerate thresholds for disclosure based on a percentage of current assets (10%) or a specified dollar amount ($100,000).[102] Meeting or exceeding the applicable thresholds necessitates disclosure. Similarly, Item 101(c)(1)(i), requires registrants to disclose for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for ten percent or more of consolidated revenue in any of the last three fiscal years or fifteen percent or more of consolidated revenue, if total revenue did not exceed $50 million during any of such fiscal years.[103] As another example, Item 703 establishes a requirement for registrants to disclose all repurchases of equity securities by issuers and affiliated purchasers.[104]

Materiality. The concept of materiality is used throughout the federal securities laws. The Commission has used a definition of materiality since at least 1937. Previously, the Commission defined "material," when used to qualify a requirement for the furnishing of information, as "those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the security registered." [105] In 1982, the Commission revised Rule 12b–2, which defines "material" when used to qualify a requirement for the furnishing of information, to adopt the Supreme Court's definition of materiality.[106]

The Court has held that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision.[107] The Court further explained that information is material if there is a substantial likelihood that disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information available.[108]

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[97] On several occasions, the Commission has reiterated that its requirements seek disclosure of material information. *See, e.g.,* Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33–9106 (Feb. 8, 2010) [75 FR 6290 (Feb. 8, 2010)] ("Climate Change Release") at 6292–6293 (stating "During the 1970s and 1980s, materiality standards for disclosure under the federal securities laws also were more fully articulated. Those standards provide that information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision, or, put another way, if the information would alter the total mix of available information."); Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers, Release No. 33–7558 (Jul. 29, 1998) [63 FR 41394 (Aug. 4, 1998)] ("Year 2000 Release") at 41395 (stating "Our disclosure framework requires companies to disclose material information that enables investors to make informed investment decisions."); Timely Disclosure of Material Corporate Events, Release No. 33–5092 (Oct. 15, 1970) [35 FR 16733 (Oct. 29, 1970)] at 16733–16734 ("Notwithstanding the fact that a company complies with such [annual, semi-annual and current] reporting requirements, it still has an obligation to make full and prompt announcements of material facts regarding the company's financial condition . . . Corporate managements are urged to review their policies with respect to corporate disclosure and endeavor to set up procedures which will insure that prompt disclosure be made of material corporate developments . . ."). *See also infra* note 107.

[98] *See* Sommer Report at 322 ("Although the initial materiality determination is management's, this judgment is, of course, subject to challenge or question by the Commission or in the courts.").

[99] *See Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption of a Principles-Based Accounting System,* July 2003, *available at https://www.sec.gov/news/studies/principlesbasedstand.htm* ("Section 108 Study").

[100] Item 303(a)(2) of Regulation S–K [17 CFR 229.303(a)(2)].

[101] Item 101(c)(1)(xi) of Regulation S–K [17 CFR 229.101(c)(1)(xi)].

[102] Instructions 5.B and 5.C to Item 103 of Regulation S–K [17 CFR 229.103]. *See also infra* note 120.

[103] Item 101(c)(1)(i) of Regulation S–K [17 CFR 229.101(c)(1)].

[104] Item 703 of Regulation S–K [17 CFR 229.703].

[105] Proposed Revisions of Regulation C, Registration and Regulation 12B, Registration and Reporting, Release No. 33–6333 (August 6, 1981) [46 FR 41971 (Aug. 18, 1981)] ("1981 Proposed Revisions"). The proposing release notes that, prior to proposing this definition, the definition of "material" was the same as adopted in 1937. This definition provided "[t]he term 'material', when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the security registered." *See, e.g.,* Adoption of Amendments to General Rules and Regulations, Release No. 34–4194 (Dec. 17, 1948) [*not published in the* **Federal Register**] ("1948 Adoption of Amendments to General Rules and Regulations Release").

[106] *See* 1982 Integrated Disclosure Adopting Release. Rule 12b–2 of the Exchange Act provides that the term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered. [17 CFR 240.12b–2].

In addition to the information required to be disclosed, Exchange Act Rule 12b–20 requires registrants to disclose such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. Rule 12b–20 of the Exchange Act [17 CFR 240.12b–20].

[107] *See Basic Inc.* v. *Levinson,* 485 U.S. 224 (1988) ("Basic" or "Basic v. Levinson") at 231, quoting *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976) ("TSC Industries") at 449. In *TSC Industries,* the Supreme Court adopted a standard for materiality in connection with proxy statement disclosure under Schedule 14A and Rule 14a–9 of the Exchange Act. This standard was supported by the Commission. *See TSC Industries* at footnote 10 (". . . the SEC's view of the proper balance between the need to insure adequate disclosure and the need to avoid the adverse consequences of setting too low a threshold for civil liability is entitled to consideration . . . The standard we adopt is supported by the SEC."). In *Basic,* the Court reaffirmed this standard of materiality and applied it in the Section 10(b) and Rule 10b–5 context. Exchange Act Rule 10b–5(b) prohibits any person from making an untrue statement of material fact or omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer or sale of any security. Rule 10b–5 of the Exchange Act [17 CFR 240.10b–5].

[108] *See Matrixx Initiatives, Inc.* v. *Siracusano,* 131 U.S. 1309 (2011) ("Matrixx Initiatives") at 1318, quoting *TSC Industries* at 449. In *Matrixx Initiatives,* the Court applied the materiality standard, as set forth in *TSC Industries* and *Basic.* In articulating these standards, the Supreme Court recognized that setting too low of a materiality standard for purposes of liability could cause management to "bury shareholders in an avalanche

Continued

In proposing to revise Rule 12b–2 to adopt the Court's definition of "material," the Commission noted the trend to apply the Court's definition in every type of federal securities law violation and concluded that the same test would be applied for any purpose under the Securities Act and the Exchange Act.[109] Although some commenters recommended retaining the current definition or modifying the proposed one, the Commission adopted the definition as proposed because it was based on the definition set forth by the Court.[110]

From time to time, the Commission has provided guidance to assist management in the types of assessments to make and issues to consider in determining whether information is material.[111] For example, based on a review of MD&A disclosure to evaluate the adequacy of disclosure practices and identify any common deficiencies, the Commission provided interpretive guidance on assessments management should make to determine whether disclosure of forward-looking information is required under Item 303 of Regulation S–K.[112] Similarly, in the context of determining whether financial statements must be restated, Commission staff has expressed the view that materiality determinations cannot be reduced to a numerical formula and evaluations of materiality require both quantitative and qualitative considerations.[113]

a. Comments Received

S–K Study. We received three comment letters that discussed principles-based requirements or made recommendations about quantitative disclosure thresholds.[114] Two commenters suggested that we move towards a more principles-based disclosure regime in which "companies [would be] expected to take the initiative to identify material information rather than simply respond to an extensive list of potentially relevant line-item disclosure requirements." [115] Another commenter stated that it is counterintuitive to define disclosure requirements using a "one-size-fits-all quantitative thresholds." [116]

Disclosure Effectiveness Initiative. Several commenters addressed whether disclosure requirements should be principles-based or prescriptive.[117] The majority of these commenters supported a principles-based system.[118] Some of these commenters suggested revising or eliminating existing prescriptive disclosure requirements.[119] One of these commenters stated that the "touchstone for any disclosure requirement must be materiality as seen through the eyes of a reasonable investor" and suggested reviewing the quantitative disclosure thresholds in Items 103 and 404 of Regulation S–K [120] to consider whether they are appropriate.[121] Another one of these commenters suggested amending Item 10 [122] of Regulation S–K to permit registrants to omit information otherwise required by Regulation S–K if the information is not material and if the inclusion of the information is not necessary to make any required statements not materially misleading.[123] However, this commenter noted that this provision should not apply in all instances.[124] This commenter also suggested revisions to some of the quantitative disclosure thresholds in Regulation S–K to "better calibrate" such requirements [125] and recommended that the Commission determine whether disclosure standards other than materiality should be harmonized to "lessen ambiguity as to how these undefined disclosure standards should be applied." [126]

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of trivial information." *Id.* at 1318, quoting *TSC Industries* at 448–449.

[109] *See id.*

[110] *See* 1982 Integrated Disclosure Adopting Release.

Article 1–02(o) of Regulation S–X retains the definition of "material" prior to *TSC Industries.* In Staff Accounting Bulletin No. 99, the staff indicated that it views this definition in Regulation S–X to be similar to the definitions of "material" in Rule 12b–2 of the Exchange Act and Rule 405 of the Securities Act, which are consistent with *TSC Industries. See* footnote 6 of Staff Accounting Bulletin No. 99, Release No. SAB 99 (Aug. 12, 1999) [64 FR 45150 (Aug. 19, 1999)] ("SAB 99"). As with any staff guidance referenced in this release, the views of the staff are not rules or interpretations of the Commission. The Commission has neither approved nor disapproved the views of the staff.

[111] *See, e.g.,* Climate Change Release (providing guidance as to how registrants should evaluate climate change-related issues when considering what information to disclose to investors under existing disclosure requirements and confirming that, if material, registrants should provide climate change-related disclosure); 2003 MD&A Interpretive Release (providing guidance on MD&A and emphasizing that registrants should focus on materiality).

[112] *See, e.g.,* Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] ("1989 MD&A Interpretive Release") (setting forth a two-step analysis for disclosure of material forward-looking information in MD&A). For a discussion of the Commission's forward-looking guidance under Item 303 of Regulation S–K and recent court of appeals decisions, *see* Section IV.B.3.c.

[113] *See* SAB 99.

[114] *See* letters from Fenwick & West LLP, Cooley LLP and Wilson Sonsini Goodrich & Rosati, PC (June 19, 2012) ("Silicon Valley"), Mike Liles (Apr. 10, 2013) ("M. Liles") (endorsing the comments expressed in the Silicon Valley letter) and Ernst & Young 1.

[115] *See* Silicon Valley and M. Liles.

[116] *See* Ernst & Young 1.

[117] *See, e.g.,* letters from Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (July 29, 2014) ("CCMC") (expressing support for a more principles-based approach to disclosure); SCSGP (recommending that we eliminate line-item disclosure requirements that apply without regard to materiality or that contain quantitative disclosure thresholds that do not appropriately reflect materiality); Standards & Financial Market Integrity Division, CFA Institute (Nov. 12, 2014) ("CFA Institute") (stating that a principles-based system could lead to standards that are inconsistently applied); Shearman & Sterling LLP (Nov. 26, 2014) ("Shearman") (stating that a principles-based approach would better withstand the pace at which the business environment changes); letter from the Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Mar. 6, 2015) ("ABA 2"); UK Financial Reporting Council (Mar. 10, 2015) ("UK Financial Reporting Council"); Corporate Governance Committee of the Business Roundtable (Apr. 5, 2015) ("Business Roundtable"); A. Radin.

[118] *See, e.g.,* CCMC; SCSGP; ABA 2; Shearman; UK Financial Reporting Council; Business Roundtable.

[119] *See, e.g.,* CCMC; SCSGP; Shearman; ABA 2.

[120] Item 103 of Regulation S–K requires disclosure of material pending legal proceedings. Instruction 2 specifies that no information need be given with respect to a proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed ten percent of current assets of the registrant and its subsidiaries on a consolidated basis.

Instruction 5 to Item 103 requires disclosure of proceedings related to federal, state, or local environmental protection laws when (i) the proceeding is material to the registrant's business or financial condition; (ii) the proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds ten percent of current assets of the registrant and its subsidiaries on a consolidated basis; or (iii) a governmental authority is a party to a proceeding involving monetary sanctions, unless the registrant believes that the proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interests and costs, of less than $100,000. [17 CFR 229.103].

Item 404 requires disclosure of transactions with related parties where the related party had or will have a direct or indirect material interest and the amount involved exceeds $120,000 or, in the case of SRCs, where the amount involved exceeds the lesser of $120,000 or one percent of the average of the SRC's total assets at year end for the last two completed fiscal years. [17 CFR 229.404].

[121] *See* CCMC (noting that quantitative thresholds similar to the ones in Item 103 "may not in fact be set at levels material for all, or even most companies").

[122] Item 10 of Regulation S–K contains general requirements on the application of Regulation S–K, Commission policies on projections and security ratings, incorporation by reference and the use of non-GAAP financial measures in Commission filings. [17 CFR 229.10].

[123] *See* ABA 2.

[124] *See id.* (citing the $120,000 threshold in Item 404 as an example of an instance in which the use of a quantitative disclosure threshold is appropriate).

[125] *See id.* For example, this commenter suggested increasing the quantitative threshold in Instruction 5.C to Item 103 from $100,000 to $1,000,000.

[126] *Id.* As an example, this commenter noted that "major" is used as a standard in Items 101(h)(4)(vi), 102, and 601(b)(10)(ii)(B).

Two commenters stated that a principles-based approach would provide additional flexibility to registrants by allowing them to disclose material information based on all relevant facts and circumstances.[127] One commenter, in lieu of creating new item requirements, encouraged greater staff guidance through disclosure guidance topics or staff bulletins to provide companies with factors to consider when making materiality determinations.[128] One commenter stated that using materiality as a guiding principle "carries with it the recognition that what is important to a reasonable investor may change over time."[129] Another commenter suggested that accounting professionals should readdress the concept of materiality and this would help reduce the volume of unnecessary disclosure.[130]

One commenter opposed a principles-based system, stating such a system could result in inconsistent application of the principles-based threshold and thus non-comparable information across companies.[131] This commenter also stated that the use of prescriptive disclosure requirements does not prevent companies from including additional principles-based disclosure if the company would like to do so.[132]

b. Discussion

In 2003, the staff prepared a study on the adoption of a principles-based accounting system.[133] Although it did not address disclosure requirements under Regulation S–K, many of the study's conclusions may be relevant to our general consideration of principles-based disclosure standards. The study found drawbacks to establishing accounting standards on either a rules-based or a principles-based approach.[134] The study noted that principles-only standards may present enforcement difficulties because they are, by their nature, imprecise.[135] They can also result in a significant loss of comparability among reporting entities. Prescriptive standards, on the other hand, can be circumvented more easily by structuring around the bright-line requirements of the standard.[136]

In the S–K Study, the staff stated that any recommended revisions to Regulation S–K should emphasize a principles-based approach as an overarching component of the disclosure framework while preserving the benefits of a rules-based system, which affords consistency, completeness and comparability across registrants.[137] In assessing this recommendation, we recognize the merits and drawbacks of our principles-based and prescriptive disclosure requirements.

Limiting prescriptive disclosure requirements and emphasizing principles-based disclosure could improve disclosure by reducing the amount of information that may be irrelevant, outdated or immaterial. Because prescriptive disclosure requirements may result in disclosure that is not necessarily material or important to investors, greater use of principles-based disclosure requirements may allow registrants to more effectively tailor their disclosure to provide only the information about their specific business and financial condition that is important to investors. A principles-based approach also may allow registrants to readily adapt their disclosure to facts and circumstances that may change over time.

On the other hand, reducing prescriptive disclosure requirements and shifting towards more principles-based disclosure requirements may limit the comparability, consistency and completeness of disclosure. Also, in the absence of clear guidelines for determining when information is material, registrants may have difficulty applying principles-based disclosure requirements,[138] and the disclosure provided may not give investors sufficient insight into how registrants apply different principles-based disclosure thresholds. Potentially important information that may be disclosed in response to a prescriptive disclosure requirement might not be included in response to a principles-based disclosure requirement. In the context of accounting standards, some have noted practical challenges associated with principles-based standards as "auditors and accountants may be less able to predict how regulators or courts will apply these principles in particular contexts."[139] Additionally, the use of prescriptive disclosure requirements does not prevent registrants from including additional, principles-based disclosures that the registrant deems important.

The Section 108 Study proposed a third alternative for developing new accounting standards, which the staff referred to as an "objectives-oriented" approach.[140] Under this approach, standard setters would develop new rules by clearly articulating the accounting objective of the standard and providing sufficient detail and structure so that the standard can be applied on a consistent basis. The staff further recommended that such standards should be based on a consistently-applied conceptual framework, minimize exceptions and avoid the use of bright-line tests.[141] We are soliciting comment below on whether such an approach might be appropriate for business and financial disclosures.

c. Request for Comment

6. Should we revise our principles-based rules to use a consistent disclosure threshold? If so, should a materiality standard be used or should a different standard, such as an "objectives-oriented" approach or any other approach, be used? If materiality should be used, should the current definition be retained? Should we consider a different definition of materiality for disclosure purposes? If so, how should it be defined?

7. Should we limit prescriptive disclosure requirements and emphasize a principles-based approach? If so, how? How can we most effectively balance the benefits of a principles-based approach while preserving the benefits of prescriptive requirements?

8. What are the advantages and disadvantages of a principles-based approach? Would a principles-based approach increase the usefulness of disclosures? What would be the costs and benefits of such an approach for investors and registrants?

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[127] *See* SCSGP; Shearman.

[128] *See* SCSGP.

[129] *See* Business Roundtable.

[130] *See* A. Radin.

[131] *See* CFA Institute (also citing MD&A disclosure during the financial crisis as evidence that principles-based reporting requirements alone are not sufficient).

[132] *Id.*

[133] *See* Section 108 Study. Section 108(d) of the Sarbanes-Oxley Act directed the Commission to conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

[134] *See* Section 108 Study.

[135] *See id.*

[136] *See id.*

[137] *See* S–K Study at 98.

[138] *See* Financial Reporting Council, *Cutting Clutter, available at https://www.frc.org.uk/Our-Work/Publications/FRC-Board/Cutting-Clutter-Combating-clutter-in-annual-report.pdf.* In this report, the Financial Reporting Council, the United Kingdom's independent regulator responsible for corporate governance and reporting, refers to a "threshold" problem, and lists the many words used to describe when disclosure is required. The report listed the following descriptors triggering disclosure: Critical, essential, fundamental, important, key, main, major, primary, principal, and significant. *Id.* The Financial Reporting Council's report pertains to the requirements of companies listed in the United Kingdom, but there are similarly several disclosure "thresholds" used in Regulation S–K.

[139] *See* C. Coglianese, E. Keating, M. Michael and T. Healey, *The Role of Government in Corporate Governance*, NYU Journal of Law & Business 1: 233–251 (2004).

[140] *See* Section 108 Study.

[141] *See id.*

9. Do registrants find it difficult to apply principles-based requirements? Why? If they are uncertain about whether information is to be disclosed, do registrants err on the side of including or omitting the disclosure? If registrants include disclosure beyond what is required, does the additional information obfuscate the information that is important to investors? Does it instead provide useful information to investors?

10. Do registrants find quantitative thresholds helpful in preparing disclosure? Do such thresholds elicit information that is important to investors? Do they require registrants to provide some disclosure that investors do not need? To the extent our rules contain quantitative thresholds, how should we define them? Are specified dollar amounts more or less effective than amounts based on a registrant's financial condition, such as a percentage of revenues or assets?

11. Should we develop qualitative thresholds for disclosure? Should there be a combination of quantitative and qualitative thresholds?

12. Do registrants find principles-based disclosure requirements helpful in preparing disclosure? Do such requirements elicit information that is important to investors?

13. Would principles-based disclosure affect corporate compliance and governance structures? If so, how?

2. Audience for Disclosure

The Securities Act and the Exchange Act require registrants to provide information prescribed by the Commission as necessary or appropriate in the public interest or for the protection of investors.[142] The legislative history of the federal securities laws speaks broadly to the "buying public," [143] without addressing variation in the needs or sophistication of investors.

Nearly fifty years ago, the Wheat Report recognized variation among the investor audience for disclosure and suggested that the Commission's disclosure requirements should strike a "pragmatic balance . . . between the needs of unsophisticated investors and those of the knowledgeable student of finance." [144] The Sommer Report also recognized the broad spectrum of investors but recommended that the Commission should not expect corporate filings "to be readily understandable in total by uninformed investors." [145] Instead, the Sommer Report concluded that the Commission's rules should "emphasize disclosure of information useful to reasonably knowledgeable investors willing to make the effort needed to study the disclosures, leaving to disseminators the development of simplified formats and summaries usable by less experienced and less knowledgeable investors." [146]

When adopting format and content changes to Form 10–K and the annual report to security holders as part of integrated disclosure, the Commission characterized users of Form 10–K as different from users of the annual report to security holders.[147] Specifically, the Commission viewed annual reports to shareholders as readable documents designed to be delivered to shareholders [148] and stated that the disclosure requirements in these reports "evolved in the context of shareholders making voting decisions." [149] Meanwhile, the Commission noted that Form 10–K was a more technical document,[150] and the Form 10–K disclosure was developed for "investors and other users making economic decisions about the company." [151] The Commission further noted that the most frequent users of Form 10–K disclosure were institutional investors, professional security analysts and sophisticated individual investors.

In the adopting release for these changes, the Commission stated its belief that focusing primarily on these frequent users is appropriate in formulating Form 10–K disclosure requirements, but "such a focus would not be appropriate in formulating requirements for annual reports to security holders." [152] While the Commission acknowledged the benefit of uniformity of certain minimum disclosures in the annual report to security holders and the Form 10–K, it stated that not all disclosure requirements would be identical between the Form 10–K and the annual report to security holders, which potentially served different purposes and user constituencies.

a. Comments Received

S–K Study. Two commenters noted that, in some contexts, customers, vendors and competitors of registrants typically understand certain disclosures, but that the same information is likely to be less meaningful to investors who typically would lack the necessary industry-specific knowledge and interest.[153]

Disclosure Effectiveness Initiative. Two commenters discussed the profile of the investor contemplated by our disclosure requirements and the intended audience for public company disclosures.[154] Both commenters recommended that we should assume that investors using registrants' disclosures have some level of sophistication. One of these commenters suggested that a contributing factor to increased disclosure is the current assumption that the typical investor is a novice.[155] The other commenter recommended an empirical study of the audience for financial statements and a review of who makes investment decisions and how such decisions are made.[156] This commenter stated that sophisticated investors are likely the most appropriate audience for Commission filings, as they are generally the investors performing detailed analysis and acting as price-makers. This commenter also stated that most of these investors do not express concern about the volume of disclosure.

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[142] *See* Section 7(a) of the Securities Act [15 U.S.C. 77g(a)(1)] and Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)].

[143] *See* H.R. Rep. No. 85, 73d Cong., 1st Sess. 4 (1933) (broadly referring to the "public," "buying public" or "investing public").

[144] Wheat Report at 10.

[145] Sommer Report at D–9. *See also* A.A. Sommer Jr,. *The U.S. SEC Disclosure Study,* 1 U. Pa. J. Int'l L. 145, 148 (1978) ("[T]he Committee did not believe that the Commission should design a variety of formats and degrees of summarization to serve the diverse needs of various investors. It is evident that the sophistication and knowledge of investors varies broadly, from the small, occasional [investor] through the sophisticated portfolio managers. The Committee believed that by having the Commission concentrate on the needs of sophisticated investors, the needs of other types of investors would be adequately served through the many private services which collect, synthesize, summarize and comment upon data concerning issuers.").

[146] Sommer Report at D–9. The Advisory Committee on Corporate Disclosure identified as information disseminators the "organizations commonly thought of as the financial press," *id.* at 163, that "condense, summarize and disseminate available information and thereby assist analysts and investors in obtaining investment decision making information in forms suitable to their respective needs and abilities to use it." *Id.* at D–5.

[147] *See* Amendments to Annual Report Form, Related Forms, Rules, Regulations and Guides; Integration of Securities Act Disclosure Systems, Release No. 33–6231, (Sept. 2, 1980) [45 FR 63630 (Sept. 25, 1980)] ("1980 Form 10–K Adopting Release").

[148] *See* Proposed Amendments to Annual Report Form; Integration of Securities Acts Disclosure Systems, Release No. 33–6176 (Jan. 15, 1980) [45 FR 5972 (Jan. 24, 1980)] ("1980 Form 10–K Proposing Release"). *See also* 1980 Form 10–K Adopting Release, citing Annual Reports—Information Required in Proxy Statement, Release No. 34–10591 (Jan. 10, 1974) [39 FR 3820 (Jan. 30, 1974)] for the statement that "[t]he annual report to security holders has long been recognized as the most effective means of communication between management and security holders. Such reports are readable because they generally avoid legalistic and technical terminology and present information in an understandable, and often innovative, form . . . The Commission believes it is in the public interest that all security holders be provided with meaningful information regarding the business, management, operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information." *See also* Annual Reports, Release No. 34–11079 (Oct. 31, 1974) [39 FR 40766 (Nov. 20, 1974)] at 40766.

[149] 1980 Form 10–K Adopting Release at 63630.

[150] *See* 1980 Form 10–K Proposing Release.

[151] 1980 Form 10–K Adopting Release at 63630.

[152] *Id.*

[153] *See* Silicon Valley and M. Liles.

[154] *See, e.g.,* CFA Institute; Shearman.

[155] *See* Shearman (stating "it seems that disclosure if often premised on the assumption that the reasonable investor has little or no knowledge of a company's business, its industry or the merits or risks associated with its business. We believe

One commenter suggested that current disclosure is too complicated for the everyday person to read and that it should be less duplicative and more straightforward.[157] Another commenter noted the diversity of the investor community and that the Commission's mandate is to protect all investors.[158] This commenter acknowledged that some disclosures may not be useful to retail investors but may be useful to institutional investors or vice versa and that in such circumstances, disclosure should still be required. This commenter also stated that each segment of the investor community is "entitled to have access to all necessary and relevant information." Additionally, this commenter noted that broad based disclosure improves transparency and builds public trust, confidence and understanding of capital markets.

b. Discussion

We recognize the diverse composition and varied informational needs, sophistication and financial resources of investors and that some investors may obtain their analysis or advice from or through third parties who use registrant disclosures. Investors using registrant disclosure directly may include both individual investors and institutional investors, such as banks, insurance companies, mutual funds, exchange traded funds, pension funds, hedge funds and managed accounts. These investor types may also use registrant disclosure indirectly through professional data aggregators, financial advisors, proxy advisors, professional analysts, journalists, and other third parties who process and synthesize disclosures for end user investors.

Different investor types and third parties may focus on different filings or items of disclosure.[159] Accordingly, the audience for disclosure is an important consideration in determining the means for disclosure, and specifically, in which filings or locations certain information should be directly provided and where cross-references, hyperlinks or incorporating by reference to information elsewhere is appropriate.[160]

Similarly, as different investors and third parties use disclosure in different ways and seek varying degrees of information, the audience for disclosure is also an important consideration in determining what information is disclosed. Institutional investors, their financial advisors and some third parties often use, and have supported requiring complex information and interactive data.[161] These types of investors are likely to use disclosures of large numbers of registrants and therefore, may be relatively more interested in standardized disclosure formats well-suited for large-scale processing and analysis, including machine-readable formats.

Other investors may seek disclosure that emphasizes, within the universe of information that is disclosed, the information and analysis that management believes is most important.[162] To the extent some investors rely on market prices to efficiently incorporate all public information, rather than relying on disclosures directly, it could be argued that disclosures should be tailored to those users most likely to actively follow a registrant, transact in the registrant's securities and set the market price.[163] Investors in registrants that do not have a public trading market for their securities, however, may rely more directly on disclosure to evaluate their investments.

c. Request for Comment

14. Should registrants assume some level of investor sophistication in preparing their disclosures? If so, what level or levels of sophistication? How should investor sophistication be measured? What are the risks or other disadvantages to investors if registrants either underestimate or overestimate the level of investor sophistication and resources when preparing their disclosures? Does disclosure protect all investors if it is tailored to a subset of the investor community?

15. Should we revise our rules to require disclosure that is formatted to provide information to various types of investors in a manner that will facilitate their use of disclosure for investment and voting decisions?

16. Commenters have suggested that disclosure should be written for a more sophisticated investor than current disclosure appears to contemplate,[164] and that tailoring disclosure to less sophisticated investors contributes to excessive disclosure.[165] Should our disclosure requirements be revised to address these views? If so, how could we revise our disclosure requirements, and which requirements should we revise, to encourage more appropriately targeted disclosure? If we revised our disclosure requirements to address these views, would there be any harm or costs to investors?

17. How do investors and other users of disclosure currently access and use this information? How does this vary across different subsets of the audience for the disclosure?

18. Should we use investor testing, such as focus groups or electronic surveys, to provide input on investors' use of and access to disclosure?

19. To what extent should the reliance of certain investors on market prices or third-party analyses, rather than using

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that the profile of the reasonable investor has devolved to the 'neophyte investor' . . .").

[156] *See* CFA Institute.

[157] *See* letter from Carrie Devorah (Sept. 25, 2015).

[158] *See* letter from the American Federation of Labor and Congress of Industrial Organizations (Nov. 20, 2015) ("AFL–CIO").

[159] *See, e.g.,* 1980 Form 10–K Adopting Release. *See also, e.g.,* M. Drake, D. Roulstone, and J. Thornock, *The Determinants and Consequences of Information Acquisition via EDGAR,* 32 Contemp. Acct. Res. 1128, at 1128–1161 (2015) (documenting that, of the 9.8 million users who directly searched the EDGAR database from 2008 to 2011, 86% are infrequent users accessing the database less than three times a quarter and generally accessing only one filing, although there is a small percentage of users accessing EDGAR at least every other trading day).

[160] For a further discussion of cross-referencing, incorporation by reference and hyperlinks, *see* Sections V.A., V.B., and V.C., respectively.

[161] *See, e.g.,* CFA Institute, *Financial Reporting Disclosures: Investor Perspectives on Transparency, Trust, and Volume,* July 2013, ("CFA Report"), *available at http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2013.n12.1; see also* Interactive Data Release at footnote 98.

[162] For a discussion of tailoring disclosure to meet the diverse or potentially competing needs of the investor audience, *see* SectionV.F.

[163] The efficient market theory suggests that under certain assumptions, most investors, when making investment decisions, could rely on market prices to incorporate all available information. According to this theory, most investors would not need to individually examine much of the information in disclosures. *See, e.g.,* Stephen J. Choi, *Company Registration: Towards a Status-Based Antifraud Regime,* 64 U. Chi. L. Rev. 567, 569–70 (1997); Eugene F. Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work,* 25 J. Fin. 383, 383–417 (1970). The Sommer Report stated that the efficient market theory is silent as to the optimum amount of information required or whether the optimum should be achieved on a mandatory or voluntary basis. The Sommer Report also stated that market forces alone are insufficient to cause all material information to be disclosed. *See* Sommer Report at D–6. Other studies have noted the limitations of the efficient market theory. *See, e.g.,* Robert J. Shiller, *From Efficient Markets Theory to Behavioral Finance,* J. Econ. Persp. 83, 83–104 (2003).

[164] *See* CFA Institute.

[165] *See* Shearman.

disclosure directly, be a factor in determining the type of investor to which disclosures should be targeted?

20. To what extent should we consider the needs of other market participants, such as professional securities analysts and other third parties, in revising our disclosure requirements? What would be their needs?

3. Compliance and Competitive Costs

When the Commission is engaged in rulemaking it is statutorily required to consider, in addition to the protection of investors, whether an action will promote efficiency, competition, and capital formation.[166] Disclosure requirements can help reduce information asymmetries from management to investors,[167] improving the allocative efficiency of the capital markets and enhancing capital formation by lowering the cost of capital.[168] Lack of information may affect investors' willingness to invest and may decrease the allocative efficiency of the capital markets. Thus, requiring an appropriate level of disclosure is critical to a well-functioning capital market.

Disclosure may also have costs to registrants that could negatively affect these factors, although advances in technology and communications have the potential to reduce these costs. As disclosure costs rise, registrants' costs of capital may increase, which can reduce investment, lower the value of a company and impede economic growth. Registrants may also choose to exit the Commission's reporting system, when eligible, or remain private if the disclosure requirements are sufficiently costly.[169]

a. Comments Received

S–K Study. One commenter stated its belief that "certain Regulation S–K disclosures impose unnecessary costs while not providing concomitant value to investors . . . because the original purposes of the disclosure requirements have been achieved or are no longer as important." [170] Two commenters stated that potential first-time registrants evaluate Exchange Act reporting and compliance costs in weighing the costs and benefits of an initial public offering.[171]

Disclosure Effectiveness Initiative. Some commenters expressed general support for changes in disclosure requirements that would reduce costs for registrants while still providing needed information to investors.[172] Other commenters, in making specific recommendations, acknowledged compliance costs of these recommendations [173] or suggested ways to minimize the cost of such recommendations.[174] One commenter noted the high cost of regulations, especially those promulgated by the Commission.[175]

b. Discussion

We are sensitive to the costs of disclosure, including the administrative and compliance costs of preparing and disseminating disclosure as well as the potential costs of disclosing sensitive information to competitors. While the S–K Study did not specifically consider costs to investors, the staff identified economic principles that should be given consideration when reviewing and considering changes to our disclosure requirements, including: (1) The extent to which a given disclosure requirement entails high administrative and compliance costs; and (2) the extent to which disclosure of a company's proprietary information may have competitive or other economic costs.[176]

To address the potential negative effects that would result from disclosing sensitive information, our rules permit registrants to request confidential treatment of proprietary information, if disclosure of such information would cause competitive harm to the registrant.[177] The Commission generally does not consider confidential treatment to be appropriate for information that is necessary for the protection of investors.[178] If the Commission grants a request for confidential treatment, the registrant may redact the proprietary information from its public filings.

The Commission also has addressed the costs of disclosure through regulatory relief in the form of scaled disclosure requirements for certain smaller registrants. These accommodations are intended to promote capital formation and provide relief where the fixed costs of compliance may be particularly high relative to the size of the company while also considering investor protection.[179]

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[166] *See supra* note 6.

[167] *See* Robert Verrecchia, *Essays on Disclosure,* 32 J. Acct. Econ. 91, 91–180 (2001) (demonstrating that a credible commitment to disclosure reduces uncertainty and information asymmetries between a firm and its investors or among investors).

[168] *See, e.g.,* Richard Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 J. Acct. Res. 385, 385–420 (May 2007) ; Luzi Hail and Christian Leuz, *Cost of Capital Effects and Changes in Growth Expectations around U.S. Cross-Listings,* 93 J. Fin. Econ. 428, 428–454 (2009). Lambert, Leuz, and Verrecchia (2007) demonstrate theoretically that the quality of accounting information can influence the cost of capital. Hail and Leuz (2009) find empirical evidence that firms, especially firms from countries with weaker institutional structures that cross-list securities on U.S. exchanges, experience a decrease in their costs of capital.

[169] *See* Brian J. Bushee & Christian Leuz, *Economic Consequences of SEC Disclosure Regulation: Evidence from the OTC Bulletin Board,* 39 J. Acct. Econ. 233, 233–264 (2005). Bushee and Leuz find seventy-six percent of firms trading on the OTC Bulletin Board ("OTCBB"), many of which tended to be on average significantly smaller by market capitalization, left the market after the OTCBB eligibility rule required registrants whose securities were quoted on the OTCBB to file updated financial reports with the Commission or with their banking or insurance regulators.

[170] *See* Ernst & Young 1.

[171] *See* Silicon Valley and M. Liles.

[172] *See, e.g.,* letters from Ernst & Young, dated Nov. 20, 2015 ("Ernst & Young 2"); letter from the Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Nov. 14, 2014) ("ABA 1"); ABA 2; Business Roundtable; Arthur Mboue (Jun 24, 2015); and the Biotechnology Industry Organization (July 14, 2015) ("Biotech Industry Organization").

[173] *See, e.g.,* SCSGP at 14 (acknowledging that seeking repeal of requirements only a few years after their enactment would impose "an additional layer of costs"); ABA 2 (stating that, in its review of specific Regulation S–K items, it considered whether certain requirements could be better calibrated to provide investors with relevant and useful disclosure while balancing compliance costs to companies); letter from Allianz Global Investors (Aug. 13, 2015) ("Allianz") (stating that its goal in requesting certain additional environmental data is to improve disclosure while minimizing any additional reporting burden) and letter from Data Transparency Coalition (Oct. 29, 2015) ("Data Transparency Coalition").

[174] *See* letter from Sustainability Accounting Standards Board (Nov. 12, 2014) ("SASB").

[175] *See* A. Radin.

[176] *See* S–K Study at 94.

[177] Rule 80(b)(4) [17 CFR 200.80(b)(4)] (adopted under the Freedom of Information Act [5 U.S.C. 552] ("FOIA")) (identifying as "nonpublic" records those that disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential); Securities Act Rule 406 [17 CFR 230.406]; Exchange Act Rule 24b–2 [17 CFR 240.24b–2] *See also National Parks and Conservation Association* v. *Morton,* 547 F.2d 673 (D.C. Cir. 1974) (holding that information is confidential for purposes of FOIA if it is of the type not usually released to the public and, if released, would cause substantial competitive harm) and *National Parks and Conservation Association* v. *Kleppe,* 547 F.2d 673 (D.C. Cir. 1976) (holding that information is confidential if its release is likely to cause substantial competitive harm and that actual competitive harm need not be shown).

[178] Securities Act Rule 406(b)(2)(iii) [17 CFR 230.406(b)(2)(iii)]. The staff has provided guidance that, except in unusual circumstances, disclosure required by Regulation S–K or any other applicable disclosure requirement is not an appropriate subject for confidential treatment. *See* Staff Legal Bulletin 1A, Confidential Treatment Requests (July 11, 2001) ("Staff Legal Bulletin 1A"), *available at http://www.sec.gov/interps/legal/slbcf1r.htm.*

[179] *See, e.g.,* SRC Adopting Release at 942 (stating that the SRC definition "is appropriately scaled in that it reduces costs to smaller companies caused by unnecessary information requirements, consistent with investor protection"); Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8819 (July 5, 2007) [72 FR 39670 (July 19, 2007)] at 39678 (stating the Commission's objective to "provide maximum flexibility for [SRCs] without disadvantaging investors [by] establishing a baseline of required disclosure, [while encouraging SRCs] to determine for themselves the proper balance and mix of

Throughout this concept release, we seek comment on changes to specific disclosure requirements that could reduce costs for registrants, while still providing investors with information that is important or useful to making informed investment and voting decisions. Separately, we address the effectiveness of our scaled disclosure requirements.[180] In addition to those discussions, we are interested in public comment on other methods we could consider to reduce costs for registrants that would not compromise investors' access to important information.

c. Request for Comment

21. Do current disclosure requirements appropriately consider the costs and benefits of disclosure to registrants and investors? How should the Commission evaluate benefits, such as those arising from disclosure, that cannot be easily quantified?

22. In addition to scaled disclosure and confidential treatment, are there other accommodations that we could make to reduce costs for registrants while still providing investors with the information that is important or useful to making informed investment and voting decisions?

23. Are there other benefits and costs that we should consider when evaluating disclosure effectiveness?

IV. Information for Investment and Voting Decisions

A. Core Company Business Information

Disclosure about a registrant's business lays the groundwork for understanding and assessing a company, its operations and financial condition. Information about a registrant's industry, business environment and other factors affecting the business helps inform investment and voting decisions by placing other disclosure in context. Schedule A of the Securities Act requires disclosure of the general character of the business transacted or to be transacted by the registrant. Item 101 of Regulation S–K similarly requires a description of a registrant's business. Item 102 requires disclosure about a registrant's materially important physical properties. We are reviewing the disclosure required by Item 101(a)(1) and (c)[181] and Item 102 of Regulation S–K to determine whether they continue to provide investors with the information they need to understand the nature of a registrant's business and properties. We are seeking public input on whether there are any disclosure requirements that should be eliminated or modified and whether we should add any new disclosure requirements to these Items.

1. General Development of Business (Item 101(a)(1))

Item 101(a) of Regulation S–K requires a description of the general development of the business of the registrant during the past five years, or such shorter period as the registrant may have been engaged in business.[182] In describing the general development of the business, Item 101(a)(1) requires disclosure such as the following: The year in which the registrant was organized and its form of organization; the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter, as part of a general recommendation to limit disclosure requirements asking for the same or very similar information on multiple occasions, noted redundancies between current reports on Form 8–K and annual reports on Form 10–K and recommended that redundant disclosure in reports subsequent to disclosure in a Form 8–K should not be required.[183] For example, and as noted by this commenter, Items 1.03 (Bankruptcy or Receivership) and 2.01 (Completion of Acquisition or Disposition of Assets) of Form 8–K require disclosure similar to the disclosure required under Item 101(a)(1). This commenter also recommended making a distinction under Item 101(a)(1) for new registrants, which may be disclosing the general development of their business for the first time in a registration statement, and established reporting registrants, which would have disclosed such information in a previous filing.

b. Discussion

A requirement to provide a brief outline of the general development of the business for the preceding five years was included in the earliest forms of registration statements and annual reports.[184] The first version of Regulation S–K adopted in 1977 included Item 101(a)(1) as part of the description of business disclosure requirements.[185] At that time, the Commission amended Item 101(c) to delete a requirement to discuss specific business changes during the past three fiscal years noting "[a]ny material changes would be described pursuant to paragraph (a) of the item." [186]

Business developments and other disclosure called for by Item 101(a)(1) are often reflected elsewhere in the filing, such as in the financial statements or MD&A. Additionally, in 2004, the Commission expanded the number of reportable events on Form 8–K to include items that may result in disclosure that overlaps with the requirements of Item 101(a)(1), such as disclosure of entry into a material definitive agreement, including business combination agreements.[187]

c. Request for Comment

24. Does the current requirement in Item 101(a)(1) to describe the general development of a registrant's business during the past five years provide useful disclosure that is not available either elsewhere in the current filing (*e.g.,* MD&A or the notes to the financial

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disclosure . . . given the costs of compliance and the market demand for information").

[180] For a discussion of our scaled disclosure requirements, *see* Section IV.H.

[181] The staff is separately considering certain aspects of Item 101 in developing recommendations for potential changes to update or simplify certain disclosure requirements. For a description of this project, *see supra* Section I.

[182] 17 CFR 229.101(a)(1). Item 101(a)(1) states information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

[183] *See* CCMC (also noting redundancies between Item 4.01 of Form 8–K (Changes in Registrant's Certifying Accountant) and Item 304 of Regulation S–K (disclosure of changes in and disagreements with accountants) and Item 3.02 of Form 8–K (Unregistered Sales of Equity Securities) and Item 701 of Regulation S–K (disclosure of recent sales of unregistered securities)).

[184] *See, e.g.,* Item 6 of Form A–2 adopted in 1935, which required registrants to outline briefly "the general development of the business for the preceding five years." *See* Release No. 33–276 (Jan. 14, 1935) [*not published in the* **Federal Register**]. Additionally, Item 5 of Form A–1, adopted in 1933, required registrants to briefly describe the length of time the registrant had been engaged in its business. *See* Release No. 33–5 (July 6, 1933) [*not published in the* **Federal Register**]. *See also* S–K Study at 32, footnote 88.

[185] *See* 1977 Regulation S–K Adopting Release.

[186] *Id.* at 65553. ("The disclosure requirement relating to descriptions of products or services has also been amended to delete the requirement that changes in the kinds of products produced or services rendered or in the markets or methods of distribution during the past three fiscal years be discussed. Any material changes would be required to be described pursuant to paragraph (a) of the item.").

[187] *See* Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date, Release No. 33–8400 (Mar. 16, 2004) [69 FR 15594 (Mar. 25, 2004)] ("2004 Form 8–K Adopting Release").

statements) or in any prior filing, including current reports on Form 8–K? Should we require additional or more specific information under Item 101(a)(1) and, if so, what type of information and why?

25. How could we improve Item 101(a)(1)? For example, is the five-year time frame for this disclosure appropriate? Would a shorter or longer time frame be more appropriate? If so, what time frame would be appropriate and why?

26. Does this disclosure continue to be useful for registrants with a reporting history? Once a registrant has disclosed this information in a registration statement should we allow registrants to omit this disclosure from subsequent periodic reports unless material changes occur? Alternatively, should we require registrants to describe its business as currently conducted as well as any material changes that have occurred in the last five years?

27. Should we revise Item 101(a)(1) to require disclosure of a registrant's business strategy? Would investors find such a disclosure important or useful? If so, should this requirement be included in a registrant's MD&A? Should we define "business strategy"? If so, how?

28. Should we permit a summary disclosure of the general development of a registrant's business in all filings except the initial filing? For example, should we require a more detailed discussion of a registrant's business in the initial filing, and in subsequent filings only require a summary of the registrant's business along with a discussion of material changes in the business as previously disclosed in the registrant's Form 10–K? Alternatively, should we require a more detailed discussion of a registrant's business on a periodic basis, such as every three years, and a summary disclosure in other years? Should any such requirement be conditioned on timely reporting or some other consideration?

29. What types of investors or audiences are most likely to value the information required by Item 101(a)(1)?

30. What is the cost of providing the disclosure required by Item 101(a), including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 101(a).

2. Narrative Description of Business (Item 101(c))

While Item 101(a) requires disclosure of the general development of the business, Item 101(c) requires a narrative description of a registrant's business and identifies thirteen specific items that must be disclosed:[188]

(i) principal products produced and services rendered;
(ii) new products or segments;
(iii) sources and availability of raw materials;
(iv) intellectual property;
(v) seasonality of the business;
(vi) working capital practices;
(vii) dependence on certain customers;
(viii) dollar amount of backlog orders believed to be firm;
(ix) business subject to renegotiation or termination of government contracts;
(x) competitive conditions;
(xi) company-sponsored research and development activities;
(xii) compliance with environmental laws; and
(xiii) number of employees.

a. Comments Received

S–K Study. Two commenters recommended eliminating the requirement in Item 101(c) to disclose the amount of backlog orders believed to be firm for EGCs, stating the concept of backlog is not a "meaningful metric" for most of these companies.[189] These commenters stated that eliminating this requirement for EGCs would not "compromise the delivery of meaningful disclosure to investors." These commenters also raised the question of whether the concept of backlog (or for businesses other than industrials, some other measure of committed revenue that is not yet reflected in the financial statements) would be addressed more appropriately in MD&A. Another commenter recommended eliminating disclosure requirements that no longer apply due to market or other changes and noted backlog as an example.[190] This commenter recommended eliminating this requirement for all registrants, not only EGCs, or moving this requirement to MD&A.

Disclosure Effectiveness Initiative. One commenter stated that many of the subsections of Item 101(c) would be more appropriately addressed elsewhere in the filing, stating that when such information is material to a registrant, investors would be better served by having the registrant address that information in its MD&A or risk factors.[191]

b. Discussion

Consistent with Schedule A of the Securities Act, the earliest forms of registration statements and annual reports required a brief outline of the general character of the business done and intended to be done by a registrant.[192] Many of the disclosure requirements that currently appear in Item 101(c) were adopted in 1973 following investigation of the hot issues markets.[193] The adopting release notes that, in making investment decisions, venture capitalists and underwriters typically obtain specific information from companies about their competitive position and the methods of competition in their respective industries, and accordingly, the new requirements were expected to provide similar information to the investing public.[194] At the same time, the Commission also added requirements for the disclosure of the amount of backlog orders, the sources and availability of raw materials essential to the business, the number of employees and working capital practices.[195]

In the S–K Study, the staff recommended reviewing the description of business for continuing relevance in light of changes that have occurred in the way businesses operate, which may make other disclosures relevant that are not expressly addressed under current requirements.[196] As an example, the S–K Study noted that requirements could be more specific as to additional disclosure that would be necessary where a business relies heavily on intellectual property owned by a third party or relies on a service agreement with third parties to perform necessary business functions.[197]

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[188] 17 CFR 229.101(c). Item 101(c)(1) specifies that, to the extent material to an understanding of the registrant's business taken as a whole, the description of each segment must include the information specified in subsections (i) through (x). Information in subsections (xi) to (xiii) is required to be discussed for the registrant's business in general; where material, the segments to which these matters are significant also must be identified.

[189] *See* Silicon Valley and M. Liles. Item 101(c)(1)(viii) requires disclosure of the dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog.

[190] *See* Ernst & Young 1.

[191] *See* SCSGP (stating that the following subsections of Item 101 would be more useful if included in MD&A: backlog ((c)(1)(viii)), working capital practices ((c)(1)(vi)), sources and availability of raw materials ((c)(1)(iii)), dependence on certain customers ((c)(1)(vii)), competitive conditions ((c)(1)(x)), compliance with environmental laws ((c)(1)(xii)) and risks attendant to foreign operations ((d)(3))).

[192] *See, e.g.,* Item 5 of Form A–2 adopted in 1935, which required registrants to outline briefly "the general character of the business done and intended to be done by the registrant and its subsidiaries." *See* Release No. 33–276 (Jan. 14, 1935) [*not published in the* **Federal Register**]. Additionally, Items 3 through 5 of Form A–1, adopted in 1933, required registrants to briefly describe the "character of business done or intended to be done," disclose a list of states where the issuer owned property and was qualified to do business, and the length of time the registrant had been engaged in its business. *See* Release No. 33–5 (July 6, 1933) [*not published in the* **Federal Register**]. *See also* S–K Study at 32, footnote 88.

[193] *See* Hot Issues Adopting Release. *See also* Hot Issues; Meaningful Disclosure, Release No. 33–5274 (July 26, 1972) [37 FR 16005 (Aug. 9, 1972)].

[194] *See* Hot Issues Adopting Release.

[195] *See id.*

c. Request for Comment

31. Do the disclosure requirements in Item 101(c) continue to provide useful information to investors? How could we improve Item 101(c)'s requirements?

32. How could we update Item 101(c) to better reflect changes in the way businesses operate? Are there particular categories or types of registrants for which these disclosure requirements are more or less relevant?

33. Are there additional line-item disclosure requirements about a registrant's business that would improve the quality and consistency of disclosure? Are there any categories of information that certain registrants voluntarily provide, and are not required to disclose under Item 101(c), that we should include in Item 101(c)?[198] What would be the benefits and challenges of requiring disclosure of additional categories of information?

34. Currently, some registrants include in their business section a general description of their industry. Should industry disclosure be a separate requirement? If so, would this requirement be more useful to investors in the business section or in MD&A?

35. Should we require additional specific disclosure relevant to particular industries, such as manufacturing or technology companies? If so, which industries and why? What are the benefits and challenges of requiring industry-specific disclosure?[199]

36. What is the impact on disclosure of listing the thirteen item requirements in Item 101(c)? In practice, do registrants view Item 101(c) as a checklist? Do the prescriptive items result in disclosure of information that is not important by some registrants?

37. Should we require Item 101(c) disclosure only in the initial filing with follow-up disclosure of any material changes for subsequent years? Should any such requirement be conditioned on timely reporting or some other consideration? Should the requirements differ for registration statements and periodic reports?

38. Is there any information currently disclosed in the description of business that should be presented in a different context such as MD&A or risk factors? Why?

39. In some circumstances, disclosure is required under Item 101(c)(1) if material. The item specifies that, to the extent material to an understanding of the registrant's business taken as a whole, the description of each segment shall include the information in (c)(1)(i) through (x) and that matters in (c)(1)(xi) through (xiii) shall be discussed for the registrant's business in general; where material, the segments to which these matters are significant shall be identified. Additionally, some sub-items of Item 101(c)(1) require disclosure if material, such as (c)(1)(ii) and (c)(1)(ix),[200] while others do not.[201] Should we require disclosure of all line items in Item 101(c) in all circumstances, regardless of materiality? Why or why not? Alternatively, would a principles-based approach to disclosure about a registrant's business and operations allow flexibility to disclose information that is important to investors? If so, how should such a disclosure requirement be structured? What factors should we consider in developing such a requirement?

40. What types of investors or audiences are most likely to value the information required by Item 101(c)? Would an alternative format or presentation of the information improve the value of such disclosure to a particular type of investor or audience? If so, what type of format or presentation?

41. What is the cost of providing the disclosure required by Item 101(c), including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 101(c).

3. Technology and Intellectual Property Rights (Item 101(c)(1)(iv))

Item 101(c)(1)(iv) requires disclosure of the importance to the segment and the duration and effect of all patents, trademarks, licenses, franchises and concessions held.[202]

a. Comments Received

S–K Study. None

Disclosure Effectiveness Initiative. None.

b. Discussion

A broad range of industries benefit from intellectual property, both directly and indirectly,[203] and intellectual property has become increasingly important to business performance.[204] Certain industries produce or use significant amounts of intellectual property or rely more heavily on these rights.[205] Accordingly, certain registrants provide detailed disclosure in response to Item 101(c)(1)(iv), and disclosure varies among registrants and across industries.

In the biotechnology and pharmaceutical industries, registrants that provide detailed patent disclosure often disclose the jurisdiction in which the patent was filed, year of expiration, type of patent (*e.g.*, composition of matter, method of use, method of delivery or method of manufacturing), products or technologies to which the patent relates and how the patent was acquired (*e.g.*, licensed from another entity or owned and filed by the registrant). Some registrants in these industries aggregate patent disclosure by groups of patents, potentially making disclosure about individual material patents difficult to discern. As registrants in the biotechnology and pharmaceutical industries regularly sell one or a few patented products that generate substantial revenue, disclosure of "patent cliffs," [206] which often result in material adverse financial effects, may be required in the risk factors section or MD&A.

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[196] *See* S–K Study at 99–100.

[197] Below, and in other parts of this release, we discuss other areas where our requirements could be revised to reflect changes in the way businesses operate.

[198] For example, the staff has observed that many registrants provide disclosure about the regulatory environment in which their business operates although no specific line-item disclosure requirement for this exists.

[199] For a discussion of industry-specific disclosures, *see* Section IV.E.

[200] For example, Item 101(c)(1)(ii) requires a description of the status of a product or segment (*e.g.*, whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary), if there has been a public announcement of, or if the registrant otherwise has made public information about, a new product or segment that would require the investment of a material amount of the assets of the registrant or that otherwise is material. In addition, Item 101(c)(1)(ix) requires a description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

[201] For example, Item 101(c)(1)(xiii) requires disclosure of the number of persons employed by the registrant.

[202] 17 CFR 229.101(c)(1)(iv).

[203] *See* Economics and Statistics Administration and United States Patent and Trademark Office, *Intellectual Property and the U.S. Economy: Industries in Focus* (March 2012) at iv, *available at http://www.uspto.gov/sites/default/files/news/publications/IP_Report_March_2012.pdf* ("Intellectual Property and the U.S. Economy").

[204] *See, e.g.*, Kelvin W. Willoughby, *What impact does intellectual property have on the business performance of technology firms?*, Int. J. Intellectual Property Management, Vol. 6, No. 4 (2013).

[205] *See* Intellectual Property and the U.S. Economy. This report identifies seventy-five industries as "IP-intensive." In this report, patents, trademarks and copyrights were the categories of intellectual property assessed. The methodology for designating each of these subcategories as "IP-intensive" is outlined further in this report. For patent intensive industries, the report utilized the North American Industry Classification System (NAICS) codes and identified, as the four most patent-intensive industries, those industries classified in computer and electronic product manufacturing (NAICS 334). This three-digit NAICS industry includes computer and peripheral equipment; communications equipment; other computer and electronic products; semiconductor and other electronic components; and navigational, measuring, electro-medical, and control instruments.

In the information technologies and services industry, registrants protect their intellectual property through the use of patents, trademarks, copyrights, trade secrets, licenses and confidentiality agreements.[207] Registrants with large portfolios of intellectual property often disclose that their products, services and technologies are not dependent on any specific patent, trademark, copyright, trade secret or license. As a result, these registrants often provide only high-level discussions of their intellectual property portfolios, which include general statements of a registrant's development, use and protection of its intellectual property. Registrants with smaller intellectual property portfolios tend to provide slightly more detailed discussions, including, for example, disclosure of their total number of issued patents, a range of years during which those patents expire and their total number of pending patent applications.

In general, registrants in the information technologies and services industry use copyrights to protect against the unauthorized copying of software programs [208] and trade secrets to protect proprietary and confidential information that derives its value from continued secrecy.[209] Since Item 101(c)(1)(iv) does not require disclosure about copyrights or trade secrets, registrants currently make disclosure about such matters voluntarily.

c. Request for Comment

42. Should we retain the current scope of Item 101(c)(1)(iv), which requires disclosure of a registrant's patents, trademarks, licenses, franchises and concessions? Should we expand the rule to include other types of intellectual property, such as copyrights? Should we remove the individual categories and instead require disclosure of "intellectual property"? If so, should we define that term and what should it encompass?

43. What, if any, additional information about a registrant's reliance on or use of technology and related intellectual property rights should we require and why? Should we revise Item 101(c)(1)(iv) to require more detailed intellectual property disclosure, similar to the disclosure currently provided by some biotechnology and pharmaceutical registrants? If so, should we require such detailed disclosures for all or only some of a registrant's intellectual property, such as those that are material to the business?

44. For registrants with large intellectual property portfolios, does aggregate disclosure of the total number of patents, trademarks and copyrights and a range of expiration dates provide investors with sufficient information? If not, what additional information do investors need about a company's portfolio of intellectual property? Would tabular disclosure or an alternate format or presentation of a registrant's intellectual property portfolio make the information more useful to investors? What would be the benefits and challenges of requiring disclosure of this information in this format?

45. Should we limit these disclosure requirements to registrants in particular industries? If so, which industries should we specify and why? Is disclosure about a registrant's intellectual property most useful in the context of the description of business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management?

46. What are the competitive costs of disclosure under Item 101(c)(1)(iv)?

4. Government Contracts and Regulation, Including Environmental Laws (Items 101(c)(1)(ix) and (c)(1)(xii))

Item 101(c)(1)(ix) requires disclosure of any material portion of a business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government.[210] Item 101(c)(1)(xii) requires disclosure of the material effects of compliance with environmental laws on the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, as well as any material estimated capital expenditures for the remainder of the fiscal year, the succeeding fiscal year, and such future periods that the registrant deems material.[211] There is no separate line-item requirement to discuss government regulation that may be material to a registrant's business.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter suggested including an instruction to Item 101(c)(1)(ix) to specify that, to the extent disclosure responsive to this item is included in the notes to the financial statements, cross-references should be used to avoid duplicative disclosure.[212] Another commenter stated that registrants in the pharmaceutical industry noted that high levels of regulatory disclosure and other issues common to all pharmaceutical registrants have become commonplace and have detracted from meaningful disclosure.[213] Two commenters sought increased disclosure of a registrant's corporate structure and tax strategy.[214] One of these commenters recommended specific disclosures such as a list of each country of operation and the name of each entity of the issuer group domiciled in each country of operation and the total pre-tax gross revenues of each member of the issuer group in each country of operation.[215]

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[206] The term "patent cliff" as used in the biotechnology and pharmaceutical industry refers to a future loss of patent protection and consequential loss of revenue. These potential future losses are known to registrants far in advance of their onset. When they occur, they often precipitate material adverse financial effects. *See, e.g.*, Andrew Jack, *Pharma tries to avoid falling off 'patent cliff,'* Financial Times, May 6, 2012 and *Cliffhanger*, Economist, Dec. 3, 2011. *See also* Ed Silverman, *Big Pharma Faces Some Big Patent Losses, but Pipelines are Improving*, Wall St. J.: L. Blog, *available at http://blogs.wsj.com/pharmalot/2015/02/09/big-pharma-faces-some-big-patent-losses-but-pipelines-are-improving/*.

[207] *See* Bruce Abramson, *Promoting Innovation in the Software Industry: A First Principles Approach to Intellectual Property Reform*, 8 B.U. J. Sci. & Tech. L. 75 (2002) (discussing the software industry's use of intellectual property law).

[208] *See* Dennis S. Karjala, *Copyright Protection of Operating Software, Copyright Misuse, and Antitrust*, 9 Cornell J.L. & Pub. Pol'y 161, 172 (1999) (discussing the dependence of software technology companies on copyright).

[209] *See* Raymond T. Nimmer & Patricia Ann Krauthaus, *Software Copyright: Sliding Scales and Abstracted Expression*, 32 Hous. L. Rev. 317, 325 (1995) (distinguishing between the software industry's use of trade secret law, patent law and copyright law).

[210] 17 CFR 229.101(c)(1)(ix).

[211] 17 CFR 229.101(c)(1)(xii).

[212] *See* ABA 2.

U.S. government contracts generally contain provisions that enable the contract to be terminated, in whole or in part, without prior notice, at the government's convenience (due to lack of funding or for other reasons) or for default based on performance. ASC 912–275–50–1 requires footnote disclosure of renegotiation uncertainties, their significance, and renegotiation discussions relating to the current year. In addition, ASC 912–275–50–6 states that if there are indications that a contract termination may occur and the termination would have a material effect on the contractor's operations, disclosure of the circumstances and the potential effects shall be made in the notes to financial statements. The staff has observed that, rather than provide duplicative disclosure, some government contractors cross-reference their discussion of the government's right to terminate a contract under Item 101(c)(1)(ix) to either their accounting policy disclosure for revenue recognition in the critical accounting estimates disclosure in MD&A or to their significant accounting policies in the notes to the financial statements.

[213] *See* Shearman.

b. Government Contracts (Item 101(c)(1)(ix))

i. Discussion

Business contracts with agencies of the U.S. government and the various laws and regulations relating to procurement and performance of U.S. government contracts impose terms and rights that are different from those typically found in commercial contracts. In a 1972 Notice to Registrants, the Commission noted that government contracts are subject to renegotiation of profit and to termination for the convenience of the government.[216] At any given time in the performance of a government contract, an estimate of its profitability is often subject not only to additional costs to be incurred but also to the outcome of future negotiations or possible claims relating to costs already incurred.[217]

Registrants with U.S. government contracts tend to disclose that the funding of these contracts is subject to the availability of Congressional appropriations and that, as a result, long-term government contracts are partially funded initially with additional funds committed only as Congress makes further appropriations. These registrants disclose that they may be required to maintain security clearances for facilities and personnel in order to protect classified information. Additionally, these registrants state that they may be subject to routine government audits and investigations, and any deficiencies or illegal activities identified during the audits or investigations may result in the forfeiture or suspension of payments and civil or criminal penalties.

ii. Request for Comment

47. Is disclosure about government contracts important to investors? Why? Is there any additional information about a registrant's contracts with the government that would be important to investors?

48. Rather than focusing specifically on government contracts, should we require registrants to briefly describe all material contracts? Would such a requirement elicit disclosure not otherwise provided in MD&A or the description of business?

c. Compliance with Environmental Laws (Item 101(c)(1)(xii))

i. Discussion

Pursuant to NEPA, which mandated consideration of the environment in regulatory action, the Commission adopted Item 101(c)(1)(xii) in 1973 to require disclosure of the material effects compliance with federal, state and local environmental laws may have on the capital expenditures, earnings and competitive position of the registrant.[218] Subsequent litigation concerning both the denial of a rulemaking petition and adoption of the 1973 environmental disclosure requirements resulted in the Commission initiating public proceedings in 1975 primarily to elicit comments on whether the provisions of NEPA required further rulemaking.[219] As a result of these proceedings, the Commission in 1976 amended the requirements to specifically require disclosure of any material estimated capital expenditures for environmental control facilities for the remainder of the registrant's current and succeeding fiscal years, and for any further periods that are deemed material.[220]

ii. Request for Comment

49. Should we increase or reduce the environmental disclosure required by Item 101(c)(1)(xii)? Why? What kind of information should we add to or remove from this requirement?

50. Is disclosure about the material effects that compliance with provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon a registrant's capital expenditures, earnings and competitive position important to investors? If so, should we require registrants to present this disclosure in a specific format? Would this disclosure be more appropriate in MD&A or the business section?

51. Should we require specific disclosure about the material effects that other regulations may have on a registrant's capital expenditures, earnings and competitive position? If so, are there specific laws and regulations that our rules should cover?

d. Government Regulation

i. Discussion

Although not referenced in Item 101, many registrants discuss government regulations relevant to their business.[221] Healthcare and insurance providers regularly disclose the registrant's collection, use and protection of individually-identifiable information and its compliance with the Health Insurance Portability and Accountability Act of 1996,[222] as well as the impact of the Patient Protection and Affordable Care Act[223] on its business. Biotechnology or medical device companies often disclose the status of and process for FDA approval of significant new drugs or medical devices. Public utilities typically discuss regulation by various federal, state and local authorities and include information about state ratemaking procedures, which determine the rates utilities charge and the return on invested capital they earn.

Registrants in the financial services industry regularly describe federal and state regulation as well as supervision by the Federal Reserve Board, while registrants with a material amount of U.S. government contracts disclose the laws and regulations for government contracts. Registrants with tax strategies involving foreign jurisdictions typically disclose that they are subject to income taxes in both the U.S. and numerous foreign jurisdictions, and that future changes to U.S. and non-U.S. tax law could adversely affect their anticipated financial position and results. Some disclose the impact on their business of tax treaties between the U.S. and one or more foreign jurisdictions.

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[214] *See* letter from US SIF and US SIF Foundation (Sept. 18, 2014) ("US SIF 1") (stating that a lack of information about a registrant's subsidiaries "prevent investors from accurately assessing corporate tax structure and tax strategy and the attendant contingent liabilities, as well as exposures to political risks in these countries"), and AFL–CIO ("Even minor changes to US or foreign tax policy could lead to major changes in the issuer's financial performance.").

[215] *See* AFL–CIO.

[216] *See* Defense and Other Long Term Contracts; Prompt and Accurate Disclosure of Information, Release No. 33–5263 (June 22, 1972) [37 FR 21464 (Oct. 11, 1972)].

[217] *Id.*

[218] *See supra* note 61.

[219] *See* Notice of Public Proceedings on Environmental Disclosure Release.

[220] *See* 1976 Environmental Release.

[221] However, the disclosure requirements applicable to SRCs do require some of this information, to the extent material. Item 101(h)(4)(viii) requires disclosure of the need for any government approval of principal products or services. If government approval is necessary and the SRC has not yet received that approval, SRCs are required to discuss the status of the approval within the government approval process. The staff has observed that biotechnology or medical device companies that are not SRCs also provide this disclosure. Additionally, Item 101(h)(4)(ix) requires disclosure of the effect of existing or probable governmental regulations on the business. For a discussion of scaled disclosure requirements, *see* Section IV.H.2.

[222] Public Law 104–191, 110 Stat. 1936 (1996).

[223] Public Law 111–148, 124 Stat. 119 (2010).

ii. Request for Comment

52. Given that many registrants provide disclosure of material government regulations without a specific line-item requirement, are the current disclosure requirements sufficient? Would a specific requirement seeking this disclosure provide additional information that is important to investors? If so, what specific information and level of detail should we require and why? What would be the costs of requiring disclosure of this information?

53. Foreign regulations, including foreign tax rates and treaties, may have a material impact on a registrant's operations. Should we specifically require registrants to describe foreign regulations that affect their business? If so, what specific information and level of detail should we require? How would any additional information inform investment and voting decisions? Would there be challenges for registrants to provide such disclosure?

5. Number of Employees (Item 101(c)(1)(xiii))

Item 101(c)(1)(xiii) requires disclosure of the number of persons employed by the registrant. The Division of Corporation Finance ("Division") has provided interpretive guidance on this requirement stating that, in industries where the general practice is to hire independent contractors rather than employees, companies should disclose the number of persons retained as independent contractors as well as the number of regular employees.[224]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter suggested requiring disclosure of the number of employees for each of a registrant's subsidiaries along with other information about the subsidiaries, to provide investors with the information necessary to understand the structure of the registrant and its international strategy.[225] This commenter stated that disclosure of a subsidiary in a known tax haven with "zero employees and billions in profits, for example, would signal to investors the use of a particularly aggressive and potentially risky strategy to hide profits from regulators."

b. Discussion

The number of persons employed by the registrant can help investors assess the size and scale of a registrant's operations. Changes in the number or type of persons employed can also be indicative of trends or shifts in a registrant's operations. Disclosure of the number of employees varies among registrants. Some registrants distinguish between the number of full-time and part-time employees, and others specify the number of employees in each department or division. Registrants with large numbers of employees often disclose the approximate number of employees and discuss their employees' membership in a union or similar organization. Other registrants characterize the state of their employee relations and disclose whether their employees are covered by a collective bargaining agreement or represented by a labor union.

c. Request for Comment

54. Does disclosure of the number of persons employed by the registrant help investors assess the size, scale and viability of a registrant's operations and any trends or shifts in operations? Is this disclosure important to investors and why? Is there any additional information about employees that would be important to investors? If so, what information?

55. For new registrants filing a registration statement that have not had revenue from operations during each of the preceding three fiscal years, Item 101(a)(2)(iii) requires disclosure of any anticipated material changes in the number of employees in the various departments such as research and development, production, sales or administration.[226] Is this information useful to investors? Should we include a similar requirement for all registrants in periodic and current reports? Should this requirement be in addition to or in lieu of the current requirement to disclose the number of employees?

56. Should we require registrants to distinguish among their total number of persons employed, such as by distinguishing between:

- Full-time and part-time or seasonal employees;
- Employees and independent contractors; or
- Domestic and foreign employees?

Why or why not?

57. Rather than requiring registrants to disclose the number of employees or independent contractors, should we require or permit registrants to provide a range? Why? Should we allow for different ranges based on the size of the registrant? Would reporting a range rather than a specific number reduce the costs of producing this disclosure?

58. Should we require disclosure of additional information about a registrant's employees or employment practices? What would be the challenges of requiring disclosure of any additional information, and what would be the benefits to investors?

59. As outsourcing and subcontracting have become more prevalent in the last few decades,[227] what, if any, additional information about a registrant's outsourcing or subcontracting arrangements should we require? Would this information be most useful in the context of the description of the registrant's business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management? What would be the challenges of requiring disclosure of this information?

6. Description of Property (Item 102)

Item 102 of Regulation S–K requires disclosure of the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. Item 102 also requires registrants to identify the segments, as reported in the financial statements, that use the properties described. Instruction 1 states that registrants must disclose such information as reasonably will inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities by the registrant.[228] Instruction 2 provides that, in determining whether properties should be described, registrants should take into account both quantitative and qualitative factors.[229]

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[224] *See* Regulation S–K Compliance and Disclosure Interpretations Question 203.01, *available at http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.*

[225] *See* US SIF 1.

[226] Item 101(a)(2) applies to registrants filing a registration statement on Form S–1 or Form 10 that are not subject to Sections 13(a) or 15(d) of the Exchange Act and have not received revenue from operations during each of the three fiscal years immediately before the filing of such registration statement.

[227] *See, e.g.*, Deloitte, *Deloitte's 2014 Global Outsourcing and Insourcing Survey* (2014), *available at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/strategy/us-2014-global-outsourcing-insourcing-survey-report-123114.pdf* (noting a significant rise in offshoring in the last two decades but also a small but growing reversal where companies that had previously offshored functions are bringing them back to their home country); *Here, there and everywhere*, Economist, Jan. 19, 2013 (discussing offshoring trends in the last several decades, but also noting such trends are "maturing, tailing off and to some extent being reversed").

[228] Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required. *See* Instruction 1 to Item 102.

[229] Disclosure specific to the mining industry in Item 102—Instructions 3, 5 and 7 refer to the mining industry—is outside of the scope of this release. Commission staff is undertaking a separate review of disclosure requirements for mining activities. Instructions 4, 6 and 8 apply to the oil

a. Comments Received

S–K Study. One commenter recommended that property disclosure should not be required for entities where physical plant or properties are not a significant element of enterprise value.[230]

Disclosure Effectiveness Initiative. Two commenters noted that if material to a registrant's business, MD&A would require a discussion of the importance of a property or facility and, in these instances, Item 102 may result in immaterial or duplicative disclosure.[231] One commenter recommended eliminating Item 102 disclosure, stating that disclosure of physical properties does not, in most cases, provide investors meaningful information, particularly for registrants not engaged in manufacturing.[232] Another commenter cautioned against disclosing only material properties and eliminating requirements to list locations, capacity and ownership.[233] This commenter stated that investors need a complete understanding of the scope of a registrant's operations and assets in order to evaluate the scope of its risks and opportunities. One commenter noted different triggers for disclosure in Item 102 such as the item's reference to "materially" important physical properties and "major" encumbrance. This commenter recommended a Commission study to determine whether these varied formulations should be harmonized to lessen ambiguity on their application.[234]

b. Discussion

Since 1935, we have required disclosure similar to that required under Item 102.[235] The predecessor to Item 102 called for a brief description of the general character and location of "principal plants and other important units" of the registrant and its subsidiaries and, for property not held in fee, a description of how the property was held.[236] In 1977, a similar requirement was one of two original requirements in Regulation S–K and additionally, required registrants to identify the segments that use the properties described.[237]

In 1996, the Task Force on Disclosure Simplification recommended the Commission revise Item 102 to more effectively elicit disclosure of material facts about a registrant's principal properties, rather than lists of properties and their immaterial characteristics.[238] The S–K Study recommended reviewing Item 102 for continuing relevance given that many businesses no longer require or depend on physical locations.[239] For businesses that do have material properties, the S–K Study suggested refocusing disclosure on the significance of the property to the business and any trends or uncertainties in connection with that property, rather than requiring a list of locations, capacity and ownership.[240]

In response to Item 102, registrants typically disclose information about their headquarters such as the location, size and whether they own or lease the property, as well as information about other properties material to the business. In addition to this disclosure, some registrants cross-reference to the discussion in the notes to the financial statements such as to the note on purchase and lease commitments or to the note on property, plant and equipment.

Registrants in certain industries may provide more specific disclosures. For example, registrants with retail stores often disclose the number of their stores, location, size and lease termination dates. Registrants in the hotel and lodging industry tend to disclose the location and number of rooms at each of their properties. Some registrants with casino operations disclose the number of table games and slot machines at each location. Registrants in the restaurant industry tend to disclose the number of their restaurants, location and whether they are registrant-operated or franchisee-operated stores. In the paper mill or paper production industry, registrants typically provide tabular disclosure for facilities including their geographic location and related products or use. By contrast, some registrants, such as those that provide services or information technology, may not have material physical properties and tend to disclose information about their corporate headquarters, office space and other facilities.

c. Request for Comment

60. Should we retain or eliminate Item 102? Why or why not? How could Item 102 be improved?

61. Would any additional disclosure about a registrant's properties be important to investors? If so, what additional disclosure would be important? What would be the challenges to registrants of requiring disclosure of any such additional information, and what would be the benefits to investors?

62. For registrants that may not have material physical properties, is the disclosure that registrants typically provide about their corporate headquarters, office space and other facilities important to investors?

63. Should we require property disclosure only for registrants in certain industries? If so, how should we identify these industries?

64. Should the disclosure requirements focus instead on the risks to a registrant's business resulting from the availability and cost of properties it needs for its operations?

65. What types of investors or audiences are most likely to value the information required by Item 102?

66. What is the cost of providing the disclosure required by Item 102, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 102.

B. Company Performance, Financial Information and Future Prospects

Financial information is essential to understanding a registrant's performance, financial condition and future prospects. The Commission has long recognized the need for a narrative explanation of the financial statements, as a numerical presentation and accompanying footnotes alone may be insufficient for an investor to assess the quality of the earnings and the likelihood that past performance is indicative of future performance.[241]

Regulation S–X requires companies to provide annual and quarterly financial statements,[242] while several items in Regulation S–K require additional disclosure about a registrant's financial condition and results of operations:

- Item 301 requires disclosure of selected financial data;

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and gas industry. Disclosure specific to the oil and gas industry was considered in 2008 and is also outside of the scope of this release. *See* Oil and Gas Release. Instruction 9 applies to the real estate industry. For a general discussion of Industry Guides, *see* Section IV.E.

[230] *See* Ernst & Young 1.

[231] *See* CCMC; SCSGP.

[232] *See* Shearman.

[233] *See* US SIF 1.

[234] *See* ABA 2.

[235] *See* Release No. 33–276 (January 14, 1935) [*not published in the* **Federal Register**].

[236] *Id.*

[237] *See* 1977 Regulation S–K Adopting Release.

[238] *See* Task Force Report.

[239] *See* S–K Study at 99–100.

[240] *See id.*

[241] *See, e.g.,* 1989 MD&A Interpretive Release.

[242] Articles 3, 8 and 10 of Regulation S–X [17 CFR 210.3, 210.8 and 210.10].

- Item 302(a) requires disclosure of selected quarterly financial data;[243] and
- Item 303 requires disclosure of management's discussion and analysis of financial condition and results of operations.

We are reviewing these disclosure requirements to determine whether they continue to provide investors with information that is important to evaluating a registrant's performance, financial condition and prospects for the future and what, if any, aspects of the disclosure requirements are duplicative. We are seeking public input on whether we should consider any new disclosure requirements and whether we should eliminate or modify any existing disclosure requirement related to such matters.

1. Selected Financial Data (Item 301)

Item 301 requires registrants to disclose selected financial data that highlight significant trends in the registrant's financial condition and results of operations.[244] Disclosure must be provided in comparative columnar form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. Instruction 2 to Item 301 lists specific items that must be included, subject to appropriate variation to conform to the nature of the registrant's business, and provides that registrants may include additional items they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.[245] Registrants must include selected financial data in their annual reports but this is not a requirement for quarterly reports.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. Two commenters suggested eliminating Item 301.[246] One of these commenters noted that readers can discern trends from a registrant's financial statements and MD&A,[247] while the other commenter stated the information required by this item can be readily obtained from sources other than Commission filings.[248]

Two commenters suggested revising Item 301 to allow registrants to omit the earliest two of the last five fiscal years where the information cannot be provided without unreasonable cost or expense.[249] One of these commenters suggested limiting the required disclosure to the last three fiscal years, unless all five years are necessary to illustrate a material trend in the registrant's business.[250] The other commenter also noted challenges to registrants in recasting annual periods prior to those presented in the financial statements to reflect a retrospective accounting change and suggested allowing registrants to present a retrospective accounting change only for the periods presented in the financial statements if the earlier periods cannot be recast without unreasonable effort and cost.[251] To inform investors why this information is unavailable, this commenter suggested "clear disclosure about the unreasonable effort" that would be required to recast these earliest periods.[252]

b. Five-Year Trend Data (Instruction 1)

i. Discussion

Item 301 is intended to provide selected financial data in a convenient and readable format that highlights significant trends in the registrant's financial condition and results of operations.[253] In adopting this requirement, the Commission stated that Item 301 was relevant primarily where it related to trends in the registrant's continuing operations.[254] When adopted, this item replaced a previous requirement that called for a summary of operations.[255]

Most of the items required by Item 301 are also required in the annual financial statements. Unlike the financial statements required in a Form 10–K, however, Item 301 information covers each of the registrant's last five fiscal years. Accordingly, Item 301 disclosure for items such as net sales and income or loss from continuing operations in the income statement[256] and total assets and redeemable preferred stock in the balance sheets,[257] overlaps with disclosure in the financial statements for the most recent three and two years, respectively.[258]

Earlier years required to be disclosed under Item 301 are typically available in prior annual reports. When the precursor to Item 301 was adopted in 1970, prior annual reports were not readily accessible.[259] Today, these reports can be readily accessed through EDGAR and other public sources, including company Web sites.

Despite some overlap with current and prior financial statements, Item 301 disclosure can provide information that might not be available to investors for all five years. Specifically, retrospective changes to the annual financial statements would typically be reflected in the selected financial data table across all five years instead of the three years covered in the financial statements.[260] For example, a registrant that retrospectively revises its annual financial statements to reflect discontinued operations typically may need to consider whether it should adjust years four and five in its selected financial data table in addition to the three most recent years covered in the annual audited financial statements.

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[243] The staff is separately considering Item 302(b), which requires certain disclosures of oil and gas activities, as part of its work to develop recommendations for the Commission for potential changes to update or simplify certain disclosure requirements. For a description of this project, *see* Section I.

[244] Item 301 of Regulation S–K [17 CFR 229.301].

[245] Instruction 2 to Item 301 of Regulation S–K lists the following items that must be included in the table of financial data: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock); and cash dividends declared per common share.

[246] *See* Shearman; SCSGP.

[247] *See* Shearman.

[248] *See* SCSGP.

[249] *See* ABA 2 (stating this accommodation should be allowed where the information is unavailable or not obtainable without unreasonable cost or expense as long as information (qualitative and, if reasonably available without unreasonable cost or expense, quantitative) about a material trend is otherwise provided for such two fiscal years) and Ernst & Young 2 (noting Item 3.A of Form 20–F provides this accommodation for foreign private issuers and that EGCs are also allowed a similar accommodation).

[250] *See* ABA 2.

[251] *See* Ernst & Young 2.

[252] *Id.*

[253] Instruction 1 to Item 301 [17 CFR 229.301]. *See also* 1980 Form 10–K Adopting Release.

[254] *See* 1980 Form 10–K Adopting Release. *See also* 1980 Form 10–K Proposing Release.

[255] *See* 1980 Form 10–K Adopting Release. While the item in its current form was not adopted until 1980, the concept of providing a five-year presentation of certain significant line items was suggested as early as 1967. *See* Wheat Report at 338–39 (recommending that the Commission require registrants to provide a five-year earnings summary annually).

In October 1970, the Commission expanded Form 10–K to include "Item 2—Summary of Operations," which required registrants to furnish in comparative columnar form a five-year summary of operations and any additional fiscal years necessary to keep the summary from being misleading. *See* Annual Reports by Certain Companies Having Registered Securities, Release No. 34–9000 (Oct. 21, 1970) [35 FR 16919 (Nov. 3, 1970)] ("1970 Revised Form 10–K Adopting Release").

[256] Rule 5–03 of Regulation S–X [17 CFR 210.5–03].

[257] Rule 5–02 of Regulation S–X [17 CFR 210.5–02].

[258] SRCs are not subject to the requirements of Item 301. Item 301(c) of Regulation S–K [17 CFR 229.301(c)].

[259] Before adopting the precursor to Item 301, the Commission implemented a microfiche system in 1968 that supplemented its hard copy reproduction service and was intended to "facilitate wider, more economical and more rapid distribution" of Exchange Act reports. *See* Wheat Report at 313.

[260] *See* Division of Corporation Finance Financial Reporting Manual, Section 1610.1.

Item 301 disclosure reflecting the discontinued operations for these earlier two years would not be available in either the current or prior financial statements.

ii. Request for Comment

67. Is the Item 301 disclosure that is not otherwise available or readily accessible important to investors? Are there benefits to having the five-year information in one table?

68. Should we retain, modify or eliminate Item 301? Why? Does it achieve the goal of highlighting significant trends in a registrant's financial condition and results of operation? Does it also achieve the goal of providing selected financial data in a convenient and readable format? How would the elimination of Item 301 affect investors? Would elimination of this requirement increase costs to investors because they would then need to obtain this information from prior filings?

69. If we retain Item 301, should we modify this requirement and, if so, how? Should we modify the item to require additional disclosure and, if so, what additional disclosure would be important to investors and why?

70. Instruction 1 to Item 303(a) specifies that, where trend information is relevant, reference to the five-year selected financial data pursuant to Item 301 may be necessary.[261] Despite this instruction, registrants generally do not discuss or analyze trends outside the three-year timeframe of Item 303. Does selected financial data effectively highlight significant trends that are not described elsewhere? If so, is five years an appropriate period or should we modify the number of fiscal years required to be included in the selected financial data? If selected financial data does not effectively highlight significant trends that are not described elsewhere, how could we modify our requirements to best achieve the objective of highlighting significant trends in registrants' financial condition and results of continuing operations?

71. EGCs are not required to present selected financial data for any period prior to the earliest audited period presented in connection with its first effective registration statement.[262] Should we revise Item 301 to provide a similar accommodation for all registrants? Why or why not?

72. Should we require Item 301 disclosure for the full five years only in certain instances such as when a registrant revises its annual financial statements or if information on the earliest two of the last five years is available without unreasonable cost or expense?

73. Currently, Item 301 disclosure is required in comparative columnar form. If we continued to require this disclosure, should we consider other presentation or format requirements?

74. What types of investors or audiences are most likely to value the information required by Item 301?

75. What is the cost of providing the disclosure required by Item 301, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 301.

c. Items Included in Selected Financial Data (Instruction 2)

i. Discussion

When proposing the requirement for selected financial data, the Commission sought to strike a reasonable balance between specified content and a flexible approach that permits registrants to select the data that best indicates performance.[263] The Commission noted that commenters requested increased flexibility in the form and content of this disclosure in response to an advanced notice of proposed rulemaking.[264] Accordingly, while Instruction 2 to Item 301, as adopted, contains prescriptive requirements, such as disclosure of total assets and income (loss) from continuing operations, it also permits registrants the flexibility to include additional items they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.[265]

For registrants that provide additional items in their selected financial data, disclosure varies. Financial institutions commonly provide additional metrics that may include return on average assets and capital ratios. Registrants in the telecommunications industry may include the number of subscribers while retailers may include the number of stores or average store size. While such information is not required under U.S. GAAP, it is not considered a "non-GAAP financial measure" such that reconciliation under Item 10(e) of Regulation S–K would be required.[266] Additionally, some registrants include non-GAAP financial measures in their Item 301 disclosures.

ii. Request for Comment

76. Does Instruction 2 provide a reasonable balance between specified content and a flexible approach that permits registrants to select the data that best indicates performance? Why or why not? If not, how should we modify Instruction 2? For example, should we modify Instruction 2 to be more prescriptive or provide for a more flexible approach? If a flexible approach should be used, should we require registrants to disclose their reasons for the items it included?

77. Should we require auditor involvement (*e.g.,* audit, review or specified procedures) for this disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?

78. What is the impact of listing specific items of disclosure in Instruction 2? Do registrants view the items listed in Instruction 2 as a checklist? Should additional items be considered?

2. Supplementary Financial Information (Item 302)

Item 302(a)(1) requires certain registrants to disclose quarterly financial data of selected operating results[267] and Item 302(a)(2) requires

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[261] Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[262] Public Law 112–106, Sec. 102, 126 Stat. 306 (2012).

[263] *See* 1980 Form 10–K Proposing Release.

[264] *See* 1980 Form 10–K Proposing Release; see also Annual Report Form, Release No. 34–15068 (Aug. 16, 1978) [43 FR 37460 (Aug. 23, 1978)].

[265] Instruction 2 to Item 301 of Regulation S–K [17 CFR 229.301].

[266] Item 10(e)(4) states that, for purposes of paragraph (e), non-GAAP financial measures exclude operating and other statistical measures; and ratios or statistical measures calculated using exclusively one or both of (i) financial measures calculated in accordance with GAAP, and (ii) operating measures or other measures that are not non-GAAP financial measures. [17 CFR 229.10(e)(4)]. *See also* Conditions for Use of Non-GAAP Financial Measures, Release No. 33–8176 (Jan. 22, 2003) [68 FR 4819 (Jan. 30, 2003)] ("Non-GAAP Measures Release") (stating that operating and other statistical measures such as unit sales, numbers of employees, numbers of subscribers, or numbers of advertisers are not non-GAAP financial measures).

[267] Item 302(a)(1) of Regulation S–K [17 CFR 229.302(a)(1)]. Item 302(a)(1) specifies disclosure of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S–X.

The staff is separately considering Item 302(b), which requires certain disclosures of oil and gas activities, as part of its work to develop

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disclosure of variances in these results from amounts previously reported.[268] Registrants must provide quarterly information for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are included or required by Article 3 of Regulation S–X. Under Item 302(a)(3), registrants must describe the effect of any disposals of segments of a business and extraordinary, unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.[269] If a registrant's financial statements have been reported on by an accountant, Item 302(a)(4) requires that accountant to follow appropriate professional standards and procedures regarding the data required by Item 302(a).[270]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended eliminating Item 302(a)(1), stating that this disclosure has been previously reported.[271]

b. Discussion

A few years after adopting Form 10–Q, in 1974, the Commission noted that quarterly data was still being "reported on an extremely abbreviated basis and annual financial statements [had] generally been presented without regard for or disclosure of trends occurring within a year." [272] To help remedy this information deficiency, the Commission adopted the precursor to Item 302(a), Rule 3–16(t) of Regulation S–X. This rule required, for certain registrants, disclosure of selected quarterly financial data in the notes to the annual financial statements.[273]

The Commission recognized that numerous commenters opposed the requirements, suggesting that interim results are materially affected by random events and that including such data in annual financial statements would lend them an appearance of reliability that could be misleading.[274] The Commission nevertheless adopted the disclosure requirement, stating its belief that this disclosure would "materially assist investors in understanding the pattern of corporate activities throughout a fiscal period" by disclosing trends over segments of time that are sufficiently short to reflect business turning points.[275] By contrast, the Commission stated that annual periods "may obscure such turning points and may reflect a pattern of stability and growth which is not consistent with business reality." [276] The Commission also noted that quarterly data would reflect seasonal patterns. Recognizing the costs of providing quarterly data, the Commission provided an exemption for smaller registrants and registrants whose shares were not actively traded.[277] Because the selected quarterly financial data was unaudited, and recognizing that information contained within the financial statements should be audited, the Commission moved the requirement to Regulation S–K in 1980.[278]

While most of the disclosure required by Item 302(a) is required in prior quarterly reports, Item 302(a)(1) also requires a separate presentation of certain items for a registrant's fourth quarter, which is not otherwise required. Although there is no similar requirement for disclosing the fourth fiscal quarter, U.S. GAAP typically allows investors to infer fourth quarter data by requiring disclosure of disposals of components of an entity and unusual or infrequently occurring items recognized in the fourth quarter.[279]

Additionally, as Item 302(a)(2) requires disclosure of variances in results from amounts previously reported for the two most recent fiscal years, the effect of a retrospective change in any quarter for which a Form 10–Q was filed in the more recent of the two fiscal years will be disclosed in the selected quarterly data. Absent Item 302(a)(2), this variance would not be disclosed until the following year in the corresponding fiscal quarter in which the retrospective change occurred. Disclosure in the Form 10–Q for this corresponding fiscal quarter would not include the effects of this change in the earliest of the two years presented in the Form 10–K, as this Form 10–Q would be limited to the current and prior-year interim periods.

c. Request for Comment

79. Should we retain or eliminate Item 302(a)? Why? If we retain Item

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recommendations for the Commission for potential changes to update or simplify certain disclosure requirements. For a description of this project, *see* Section 0.

[268] Item 302(a)(2) of Regulation S–K [17 CFR 229.302(a)(2)]. When disclosure in Item 302(a) varies from amounts previously reported on the Form 10–Q filed for any quarter, such as if a combination between entities under common control occurs or where an error is corrected, the registrant must disclose a reconciliation of the amounts given with those previously reported and describe the reason for the difference.

[269] Item 302(a)(3) of Regulation S–K [17 CFR 229.302(a)(3)]. The requirement applies to items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included.

[270] Item 302(a)(4) of Regulation S–K [17 CFR 229.302(a)(4)].

[271] *See* letter from Gregg L. Nelson, VP Accounting Policy & Financial Reporting, IBM Corporation (Aug. 7, 2014) ("IBM").

[272] *See* Interim Financial Data; Proposals to Increase Disclosure, Release No. 34–11142 (Dec. 19, 1974) [40 FR 1079 (Jan. 6, 1975)] ("Proposals to Increase Disclosure of Interim Results by Registrants") at 1080.

[273] *See* Interim Financial Reporting: Increased Disclosures, Release No. 33–5611 (Sept. 10, 1975) [40 FR 46107 (Oct. 6, 1975)] ("1975 Interim Financial Reporting Release"). Rule 3–16(t) of Regulation S–X required disclosure in a note to the financial statements of net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented. It also required registrants to describe the effect of any disposals of segments of a business and extraordinary, unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter. Furthermore, it required a reconciliation of amounts previously reported on Form 10–Q to the quarterly data included in the note to financial statements if the amounts differ. *See id.*

[274] *Id.*

[275] *Id.* at 46107.

[276] *Id.* at 46108.

[277] *See id.* at 46107 ("The Commission believes that the greatest investor need for these data exists in the case of such companies whose activities are most closely followed by analysts and investors. Accordingly, registrants whose shares are not actively traded or whose size is below certain limits have been exempted from this rule at the present time.").

See also Audit Committee Disclosure, Release No. 34–42266 (Dec. 22, 1999) [64 FR 73389 (Dec. 30, 1999)] (summarizing the requirements for application of Item 302(a) that had been in effect since 1980). The requirements only applied to registrants who met certain tests, including but not limited to: (1) Two of the three following requirements: (a) Shares outstanding have a market value of at least $2.5 million; (b) the minimum bid price is at least $5 per share; or (c) the registrant has at least $2.5 million of capital, surplus, and undivided profits; and (2) the registrant and its subsidiaries: (a) Have had net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (b) had total assets of at least $200 million for the last fiscal year end. *See id.*

[278] *See* General Revision of Regulation S–X, Release No. 33–6233 (Sept. 2, 1980) [45 FR 63660 (Sept. 25, 1980)]. *See also* General Revision of Regulation S–X, Release No. 33–6178 (Jan. 15, 1980) [45 FR 5943 (Jan. 24, 1980)] at 5945 ("Based upon the premise that information contained within the financial statements should be audited, the proposed rules would remove from [Regulation] S–X the requirement relating to unaudited information concerning selected quarterly financial data and place this requirement under Regulation S–K.").

[279] ASC 270–10–50–2 requires the disclosure of certain information if interim data and disclosures are not separately reported for the fourth quarter. This information includes "disposals of components of an entity and unusual, or infrequently occurring items recognized in the fourth quarter, as well as the aggregate effect of year-end adjustments that are material to the results of that quarter."

302(a), should we modify the item and, if so, how? For example, should we modify the item to require additional disclosure and, if so, what additional disclosure would be important to investors and why?

80. Is fourth quarter information, which is required under Item 302(a) but not in the annual financial statements, important to investors? Do the other instances where disclosure required by Item 302(a) is not duplicative of previously provided disclosure merit retaining the item? Why or why not?

81. The disclosure required by Item 302(a) was originally intended to help investors understand the pattern of corporate activities throughout a fiscal period by disclosing trends over segments of time that are sufficiently short to reflect business turning points.[280] Does this objective remain important today? If so, does the item achieve this objective? If the item does not achieve this objective, how could we modify it to do so?

82. Should we require auditor involvement (*e.g.*, audit, review or specified procedures) on the reliability of the disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?

83. Item 302(a) disclosure is commonly provided either as an unaudited note to the financial statements in Form 10–K[281] or separately outside of the financial statements. To the extent a registrant's Item 302(a) disclosure is provided in the notes to the financial statements, it must be tagged as XBRL data. Registrants' financial statements and footnotes presented in quarterly reports must also be tagged in XBRL.[282] Given some of Item 302(a) disclosure is available in prior quarterly reports and also tagged in XBRL, do investors use the disclosure required by Item 302(a)?

84. What types of investors or audiences are most likely to value the information required by Item 302?

85. What is the cost of providing the disclosure required by Item 302, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 302.

86. Would costs to investors increase if Item 302 was eliminated and if so, how?

87. What are the benefits of providing the disclosure required by Item 302? How could the benefits change if we made any of the changes contemplated here? Please provide quantified or qualitative estimates where possible relating to disclosure under Item 302.

3. Content and Focus of MD&A (Item 303—Generally)

Item 303 of Regulation S–K requires disclosure of information relevant to assessing a registrant's financial condition, changes in financial condition and results of operations.[283] Item 303(a) contains three core components that registrants must analyze in their MD&A disclosures: Liquidity, capital resources, and results of operations.[284] Item 303(a) also requires disclosure of off-balance sheet arrangements and contractual obligations.[285]

Overall, these MD&A requirements are intended to satisfy three principal objectives:

- Provide a narrative explanation of a registrant's financial statements that enables investors to see the registrant through the eyes of management;
- enhance the overall financial disclosure and provide the context within which financial information should be analyzed; and
- provide information about the quality of, and potential variability of, a registrant's earnings and cash flow, so investors can ascertain the likelihood that past performance is indicative of future performance.[286]

The Commission has provided substantial guidance in the past intended to improve the quality of MD&A disclosures.[287] Much of this guidance has focused on the following topics:

- Quality and focus of analysis;
- forward-looking information; and
- use of key performance indicators.[288]

To help achieve the principal objectives of MD&A, and before evaluating specific subsections of Item 303(a), we seek public input on these topics and how we could improve the overall quality of MD&A disclosure.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter stated that MD&A requirements are too principles-based.[289] Another commenter stated that MD&A's principles-based approach results in disclosure that is "among the most meaningful disclosure contained in periodic reports." [290] Another commenter recommended reexamining MD&A to, among other things, reinforce the guiding principle of materiality so that MD&A is more useful for investors.[291] One commenter recommended, in addition to MD&A, adopting a rule requiring registrants to provide an overview of their performance in the most recent year as well as expectations and concerns for the coming year, similar to what a CEO might report to the Board of Directors.[292] This commenter suggested placing the disclosure at the beginning of annual reports on Forms 10–K and 20–F. One commenter stated there should be "greater clarity" between the type of forward-looking information required in MD&A versus the "future-oriented" information that the Financial Accounting Standards Board ("FASB") believes is appropriate.[293]

One commenter suggested consolidating Commission and staff guidance on MD&A, stating that consolidation would reduce the time and effort necessary to identify and read all applicable sources and improve the quality of MD&A disclosure.[294] This commenter recommended consolidating all applicable guidance in a single, electronically-accessible location with hyperlinks to relevant sources, or alternatively, revising Item 303 to codify prior staff guidance.[295] This commenter also recommended adding instructions throughout Item 303 indicating that, to the extent disclosure in response to the item is included in the notes to the financial statements, registrants should use cross-references to avoid duplicative disclosure.[296]

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[280] *See* Interim Reporting Amendments Release.

[281] This may be due to the fact that the requirements to provide annual financial statements and Item 302 disclosure are both in Item 8(a) of Form 10–K [17 CFR 249.310].

[282] Rule 405 of Regulation S–T [17 CFR 232.405]. *See also* Interactive Data Release.

[283] Instruction 2 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[284] Item 303(a)(1), (a)(2) and (a)(3) of Regulation S–K [17 CFR 229.303(a)(1), (a)(2) and (a)(3)].

[285] Item 303(a)(4) and (a)(5) of Regulation S–K [17 CFR 229.303(a)(4) and (a)(5)].

See also Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982 (Feb. 5, 2003)] ("Off-Balance Sheet and Contractual Obligations Adopting Release").

[286] *See* 2003 MD&A Interpretive Release.

[287] *See, e.g.*, Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis, Release No. 33–9144 (Sept. 17, 2010) [75 FR 59894 (Sept. 28, 2010)] ("2010 Liquidity and Capital Resources Interpretive Release"); 2003 MD&A Interpretive Release; Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746 (Jan. 25, 2002)] ("2002 Commission Statement about MD&A"); 1989 MD&A Interpretive Release.

[288] *See generally* 2003 MD&A Interpretive Release (addressing each of these topics throughout).

[289] *See* CFA Institute. This commenter also stated that disclosure effectiveness efforts should prioritize improving financial statement presentation and enhancing challenging disclosures, such as estimates, judgments, and choices; risks and uncertainties; off-balance sheet items; commitments and contingencies; intangible assets; and going concern issues.

[290] *See* Shearman.

[291] *See* CCMC.

[292] *See* letter from Committee on Financial Reporting, New York City Bar (Sept. 3, 2014) ("NYC Bar").

[293] *See* SCSGP.

b. Quality and Focus of Analysis

i. Discussion

MD&A requires not only a discussion but also an analysis of known material trends and uncertainties and should not reiterate financial statement information in a narrative form.[297] The Commission has previously stated that a thorough analysis should assess both the effects of known material trends and uncertainties and the reasons underlying those effects.[298] The Commission has also stated that, if there is a reasonable likelihood that reported financial information is not indicative of a registrant's future financial condition or future operating performance, then registrants should disclose the underlying reasons.[299]

The Commission has focused on improving the analysis in MD&A for many years. For example, the 1989 MD&A Interpretive Release explained that MD&A is intended to give investors an opportunity to look at a registrant through the eyes of management by providing both a short and long-term analysis of the business of the registrant.[300] Despite Item 303(a)'s instruction to the contrary,[301] many registrants simply recite the amounts of changes from year to year which are readily computable from their financial statements. In 2003 guidance, the Commission added that such recitation of financial statements in narrative form fails to provide the unique perspective available to management that MD&A is meant to capture.[302] An effective analysis of known material trends, events, demands, commitments and uncertainties should include an explanation of the underlying reasons or implications, interrelationships between constituent elements, or the relative significance of those matters.[303]

Prior to 1980, Commission rules required registrants to provide a summary of earnings, including a discussion of unusual conditions that affected the appropriateness of the earnings presentations.[304] The rules also required registrants to discuss items of revenue or expense that changed more than ten percent from the prior period or changed more than two percent of the average net income or loss for the most recent three years presented. In adding MD&A to Regulation S–K in 1980, the Commission replaced the percentage thresholds with a principles-based approach that primarily focused on materiality.[305] The Commission noted that the percentage tests applied without regard to any concept of materiality or significance to the registrant's business, resulting in meaningful discussion often being obscured by information of little relevance.[306]

Commission guidance has continued to stress the importance of materiality in MD&A and stated that disclosure should emphasize material information and de-emphasize or, if appropriate, delete immaterial information.[307] The text of Item 303 ties several specific requirements to materiality. For example, disclosure of known trends in liquidity is required if such trends are reasonably likely to affect liquidity "in any material way." [308] Commitments for capital expenditures that are material must be described as of the end of the latest fiscal period.[309] Registrants also must describe certain events, transactions, or economic changes that "materially affected" reported income from continuing operations.[310]

In addition to emphasizing materiality, the Commission has also recommended a "layered approach" as a way to improve the quality of analysis in MD&A.[311] A layered approach requires registrants to present information in a manner that emphasizes, within the universe of material information that is disclosed, the information and analysis that is most important.[312] While not required by Item 303, providing an executive-level overview to MD&A may be one way of taking a layered approach.

Executive-level overviews should discuss the most important matters to MD&A, and the Commission has cautioned that this overview should not be a duplicative layer of disclosure repeated elsewhere.[313] Rather than summarize information already disclosed, the executive overview should provide a balanced, high-level discussion that identifies the most important themes or other significant matters with which management is concerned primarily in evaluating the registrant's financial condition and operating results. The overview should provide insight into material opportunities, challenges and risks, such as those presented by known material trends and uncertainties, on which the registrant's executives are most focused for both the short and long term, as well as the actions they are taking to address these opportunities, challenges and risks.[314]

ii. Request for Comment

88. What requirements in Item 303 are important to investors? How could Item 303 be improved?

89. Do the current requirements of Item 303 result in disclosure that

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[294] *See* ABA 2. *See also* letter from Henry T. C. Hu (Oct. 7, 2015) ("Hu") (referencing a "bewildering stream of guidance of varying degrees of formality and legal import" since Item 303's adoption in 1980).

[295] *See* ABA 2.

[296] *See id.* (specifying Items 303(a)(1), (a)(4), (a)(5) and disclosure of critical accounting estimates).

[297] *See* 2003 MD&A Interpretive Release.

[298] *See id.*

[299] *See id.* As an example, the Commission stated that if a change in an estimate has a material favorable impact on earnings, the change and the underlying reasons should be disclosed so that readers do not incorrectly attribute the effect to operational improvements.

[300] *See* 1989 MD&A Interpretive Release.

[301] Instruction 4 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[302] *See* 2003 MD&A Interpretive Release.

[303] *See id.*

[304] *See* Guidelines for Registration and Reporting, Release No. 33–5520 (Aug. 14, 1974) [39 FR 31894 (Sept. 3, 1974)] ("Guidelines Adopting Release"). These guidelines, known as Guide 22, were the precursor to MD&A that predated Regulation S–K. *See infra* note 344.

[305] *See* 1980 Form 10–K Adopting Release.

[306] *See id.* at 63636 ("The changes in Management's Discussion and Analysis were proposed as the result of the Commission's concerns that the disclosure elicited by the present requirement of Guides 1 and 22 is not fulfilling originally contemplated objectives. Instead, existing percentage tests are applied without regard to any concept of materiality or significance to the registrant's business. Accordingly, although some portions of the resulting discussion may be meaningful, the meaningful discussion is often obscured by the inclusion of material which is of little relevance."). The Commission also clarified that causes of material changes in line items must be described only to the extent necessary to an understanding of a company's business as a whole.

[307] *See* 2003 MD&A Interpretive Release.

[308] Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)].

[309] Item 303(a)(2) of Regulation S–K [17 CFR 229.303(a)(2)].

[310] Item 303(a)(3) of Regulation S–K [17 CFR 229.303(a)(3)].

[311] *See* 2003 MD&A Interpretive Release at 75059 ("While all required information must of course be disclosed, companies should consider using a 'layered' approach. [. . .] This presentation would assist readers in identifying more readily the most important information. Using an overview or introduction is one example of a layered approach.").

[312] *See id.* For further discussion of layered disclosure, *see* SectionV.F.

[313] *See* 2003 MD&A Interpretive Release.

[314] *See id.*

highlights the most significant aspects of the registrant's financial condition and results of operations? Are there any requirements in Item 303(a) and (b) that result in immaterial disclosures that may obscure significant information? If so, how? Should we consider a qualitative or quantitative threshold rather than materiality for requiring MD&A disclosure? If so, what threshold would be appropriate and why? Would adopting a different standard impede the flexibility of analysis and assessment under the current materiality standard? If so, how?

90. There are various sources of Commission and Division guidance on MD&A. These include Commission releases, sections of the Division's Financial Reporting Manual and staff Compliance and Disclosure Interpretations.[315] Given the amount of Commission and staff guidance on MD&A, should we consolidate guidance in a single source? If so, which guidance remains helpful, and is there guidance that we should not include in a consolidation? Would consolidation of this guidance facilitate registrants' compliance with the item's requirements, or is the existing form of this guidance sufficient?

91. Should we revise our rules to require registrants to provide an executive-level overview? If so, should our rules prescribe the information that must be covered? What would be the benefits and challenges of prescribing the content of the overview and what content should we require? For example, should we require an executive-level overview to discuss the most significant accounting estimates and judgments? Should any requirement for an executive-level overview be limited to registrants of a certain size?

92. If we were to require an executive-level overview, how could we encourage registrants to provide an overview that does not simply duplicate disclosure provided elsewhere?

93. Are there other methods that registrants could employ or new rules that we should consider that would result in more meaningful analysis in MD&A?

94. What types of investors or audiences are most likely to value the information required by Item 303 and does the audience for disclosure vary across the different parts of Item 303 disclosure? If so, how? Would the manner of presentation affect how various types of investors benefit from Item 303 disclosure?

95. Should we require a different format or presentation of MD&A such as a requirement for the discussion to be tagged or presented in a structured manner?

96. Should we require auditor involvement (*e.g.*, audit, review or specified procedures) regarding the reliability of MD&A disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?

97. What is the cost of providing the disclosure required by Item 303, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 303.

98. What are the benefits of providing the disclosure required by Item 303? How could the benefits change if we made any of the changes contemplated here? Please provide quantified or qualitative estimates where possible relating to disclosure under Item 303.

c. Forward-Looking Information

i. Discussion

Discussion and analysis of known trends, demands, commitments, events and uncertainties requires disclosure of forward-looking information.[316] This information is significant to understanding a registrant's expected future performance. The Commission previously has provided guidance relating to the standard for disclosure of forward-looking information and encouraged registrants to provide such forward-looking disclosure.[317]

In 1987, the Commission distinguished between required and optional forward-looking disclosure: Required forward-looking disclosure is based on currently known trends, events and uncertainties that are reasonably expected to have material effects, while optional forward-looking disclosure involves either anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.[318] In 1989, the Commission articulated a two-step test ("two-step test") for assessing when forward-looking disclosure is required in MD&A:

> Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments:
>
> (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.[319]

For forward-looking information, the Commission distinguished the standard for disclosure under Item 303 from the standard for disclosure necessary to avoid liability for fraud under Rule 10b–5 and stated that the "probability/magnitude test for materiality approved by the Supreme Court in *Basic, Inc.*, v. *Levinson* . . . is inapposite to Item 303 disclosure." [320] The Commission has

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[315] *See* ABA 2 (providing a six-page exhibit illustrating the various sources of guidance on MD&A).

[316] For example, the following provisions in Item 303 require disclosure of prospective information: Item 303(a)(1) (any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way); Item 303(a)(2)(ii) (any known material trends in capital resources and any expected material changes in the mix and relative cost of capital resources); Item 303(a)(3)(ii) (any known trends or uncertainties that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations); and Instruction 3 to Item 303(a) (descriptions and amounts of matters that would have an impact on future operations and have not had an impact in the past and matters that have had an impact on reported operations and are not expected to have an impact upon future operations.).

[317] *See* 2003 MD&A Interpretive Release at 75059 ("In addressing prospective financial condition and operating performance, there are circumstances, particularly regarding known material trends and uncertainties, where forward-looking information is required to be disclosed. We also encourage companies to discuss prospective matters and include forward-looking information in circumstances where that information may not be required, but will provide useful material information for investors that promotes understanding.").

[318] Concept Release on Management's Discussion and Analysis of Financial Condition and Operations, Release No. 33–6711 (Apr. 17, 1987) [52 FR 13715 (Apr. 24, 1987)].

In 1989, the Commission also explained that the safe harbors of Securities Act Rule 175(c) and Exchange Act Rule 3b–6(c) apply to required statements concerning the future effect of known material trends and uncertainties. *See* 1989 MD&A Interpretive Release.

The Commission adopted the foregoing rules in 1979 to encourage the disclosure of projections and forward-looking information as recommended by the Sommer Report. *See* Safe Harbor Rule for Projections, Release No. 33–6084 (June 25, 1979) [44 FR 38810 (July 2, 1979)].

[319] *See* 1989 MD&A Interpretive Release at 22430.

[320] *Id.* In *Basic,* the Supreme Court framed the issue of materiality of forward-looking disclosure as depending upon a balancing of both "the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity." 485 U.S. at 231

Continued

also stated that this "reasonably likely" standard is a lower threshold than "more likely than not." [321]

Several federal courts of appeals have since referenced the Commission's two-step test and addressed its role in potential liability under Exchange Act Section 10(b) and Rule 10b–5 thereunder. Although the courts are divided on the issue of whether Item 303 requirements create a general duty to disclose in the Rule 10b–5 context, these courts have agreed that the Supreme Court's standard in *Basic* v. *Levinson* is the appropriate standard for determining liability under Rule 10b–5 rather than the Commission's two-step test.[322]

ii. Request for Comment

99. Does the two-step test for disclosure of a known trend, demand, commitment, event or uncertainty result in the most meaningful forward-looking disclosure? Why or why not? How do registrants determine when something is "reasonably likely" to occur?

100. Should we revise the two-step test to apply a different standard in the first prong and if so, how? For example, should we require disclosure when a trend, event or uncertainty is more likely than not, probable, or reasonably possible to occur, rather than "reasonably likely" to occur? [323]

101. Should we eliminate the two-step test in favor of a different standard for identifying required and optional forward-looking disclosure and, if so, what test would be appropriate? For example, should we revise Item 303 to incorporate the probability/magnitude standard from *Basic* v. *Levinson*? [324] Which standard—the two-part test, *Basic's* probability/magnitude standard, or some other standard—should we require, and why? Would any particular formulation be more or less burdensome for registrants?

102. We have stated previously that quantification of the material effects of known material trends and uncertainties can promote understanding and may be required to the extent material.[325] Should we revise Item 303 to specifically require registrants, to the extent practicable, to quantify the material effects of known trends and uncertainties as well as the factors that contributed to those known trends and uncertainties? Why?

d. Key Indicators of Financial Condition and Operating Performance

i. Discussion

The Commission has previously stressed that registrants should identify and address those key variables and other qualitative and quantitative factors that are peculiar to and necessary for an understanding and evaluation of the individual registrant.[326] Key performance indicators include both financial and non-financial measures. Non-financial measures may relate to external or macro-economic matters as well as those specific to a registrant or industry.[327] The Commission has also encouraged registrants to consider whether disclosure of all key variables and other factors that management uses to manage the business would be material to investors or would promote an understanding of MD&A.[328]

Some registrants discuss industry-specific key performance indicators in MD&A, although there is not a specific requirement for this disclosure. For example, electronic gaming or social media companies typically discuss their numbers of monthly active users; numbers of unique users; numbers of unique payers; and other metrics relating to usage. Software service companies typically discuss their numbers of subscribers; customer renewal rates; and customer retention rates. Hospitals typically discuss their numbers of admissions; numbers of beds; the average length of inpatient stays; and occupancy rates. Retailers typically discuss comparable store sales, sales per square foot or gross merchandise value. Recent academic studies find that the industry-specific key factors disclosed by retailers and manufacturers provide incremental information that can help to predict registrants' future performance beyond traditional financial statement variables.[329]

Where there is no commonly accepted method of calculating a particular non-financial metric, the Commission has said that the registrant should provide an explanation of the calculation of the metric to promote comparability across registrants within the industry.[330] In addition, key performance indicators, where disclosed, should be included in a format that will enhance the understanding of the discussion and analysis.[331]

(quoting *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968)).

[321] *See* 2002 Commission Statement about MD&A at 3748.

[322] *See Stratte-McClure* v. *Morgan Stanley*, 776 F.3d 94, 100–104 (2d Cir. 2015) (holding that Item 303 requirements do give rise to a duty to disclose that may serve as the basis for liability under Rule 10b–5, but indicating that the *Basic* test for materiality of forward-looking disclosures controls instead of the Commission's two-step test); *In re NVIDIA Corp. Sec. Lit.*, 768 F.3d 1046, 1054–56 (9th Cir. 2014) (holding that Item 303 does not create a duty to disclose for Rule 10b–5 purposes and distinguishing the two-step test from the *Basic* materiality standard for forward-looking disclosure); *Oran* v. *Stafford*, 226 F.3d 275, 287–288 (3d Cir. 2000) (leaving open the question of whether an Item 303 violation could ever serve as the basis for liability under Rule 10b–5, but holding that *Basic* supplied the applicable standard for testing 10b–5 liability for forward-looking disclosures).

[323] *See* ASC 450–20–25–1. Under U.S. GAAP, when a loss contingency exists, the likelihood that the future event or events will confirm the loss or impairment of an asset or the incurrence of a liability can range from probable to remote. The areas within that range are: Probable (the future event or events are likely to occur), reasonably possible (the chance of the future event or events occurring is more than remote but less than likely) and remote (the chance of the future event or events occurring is slight).

In the context of Item 303(a)(4) (off-balance sheet arrangements), the Commission previously considered whether the "reasonably likely" threshold was appropriate for prospective information. Most commenters supported the "reasonably likely" standard. Many commenters opposed a "remote" threshold stating it would be difficult for management to apply, yield voluminous disclosures; attribute undue prominence to information that is not important to investors; confuse or mislead investors; and elicit information that would not be comparable among firms. The Commission adopted the "reasonably likely" threshold concluding that it focused on the information most important to an understanding of a registrant's off-balance sheet arrangements and their material effects. The Commission also noted potential difficulty in attempting to comply with the "remote" threshold and that use of a consistent threshold throughout MD&A would preclude the potential confusion that could result from disparate thresholds. *See* Off-Balance Sheet and Contractual Obligations Adopting Release.

[324] *See supra* note 320.

[325] *See* 2003 MD&A Interpretive Release.

[326] *See id.* (quoting the 1989 MD&A Interpretive Release, which quotes Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–6349 (Sept. 28, 1981) [*not published in the* **Federal Register**]).

[327] External or macro-economic matters, such as interest rates or economic growth rates, and their anticipated trends can be important variables for many registrants. The Commission has further encouraged registrants to consider disclosing information that may be peripheral to the accounting function, but is integral to the business or operating activity. Examples of such measures, depending on the circumstances of a particular registrant, can include those based on units or volume, customer satisfaction, time-to-market, interest rates, product development, service offerings, throughput capacity, affiliations/joint undertakings, market demand, customer/vendor relations, employee retention, business strategy, changes in the managerial approach or structure, regulatory actions or regulatory environment, and any other pertinent macroeconomic measures. *See* 2003 MD&A Interpretive Release at note 27 and accompanying text.

[328] *See id.*

[329] *See, e.g.*, C. Cole and C. Jones, *The Usefulness of MD&A Disclosures in Retail Industry*, 30 J. Acct. Auditing Fin. 127, 127–149 (2015). *See also* Y. Sun, *Do MD&A Disclosures Help Users Interpret Disproportionate Inventory Increases?*, 85 Acct. Rev. 1411, 1411–1440 (2010) (measuring the informativeness of this disclosure by measuring to what degree the information in the disclosure can help to predict variables such as future revenues and earnings or contemporary stock returns, beyond financial statement variables or other factors that can help to predict these variables).

[330] *See* 2003 MD&A Interpretive Release.

[331] *See id.*

ii. Request for Comment

103. Should we revise Item 303 to include a principles-based requirement for all registrants to disclose performance metrics and other key variables important to their business? Why or why not?

104. Should we require disclosure of any commentary, analysis, performance indicators or business drivers related to a registrant's key indicators? If so, why? For example, would it be feasible to adopt prescriptive requirements for discussion of specific performance metrics that are applicable to an entire industry and are easily comparable between registrants?

105. What types of investors or audiences are most likely to value industry-specific key performance indicators?

106. What would be the costs and benefits of requiring registrants in certain industries to disclose standardized performance metrics? How could we identify which performance metrics should be standardized across an industry?

4. Results of Operations (Item 303(a)(3))

Item 303(a)(3) requires a discussion and analysis of a registrant's results of operations and specifies four areas of disclosure:

- Any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and the extent to which income was so affected; [332]
- known trends or uncertainties that have had, or that the registrant reasonably expects will have, a material impact on net sales or revenues or income from continuing operations; [333]
- material increases in net sales or revenues, including the extent such increases are attributable to increases in prices, increases in the volume or amount of goods or services being sold, or to the introduction of new products or services; [334] and
- for the three most recent fiscal years, a discussion of the impact of inflation and changing prices on the registrant's net sales and revenues, and on income from continuing operations.[335]

Instruction 1 to Item 303(a) states that the discussion and analysis shall cover the three-year period covered by the financial statements and use year-to-year comparisons or any other format that in the registrant's judgment would enhance a reader's understanding.[336] Instruction 4 to Item 303(a) provides that registrants need not recite the amounts of changes from year to year that are readily computable from the financial statements.[337]

a. Comments Received

S–K Study: One commenter recommended that we eliminate the requirement to include prior-period results in MD&A as this information is readily available in prior filings.[338] This commenter added that the existing requirements in Item 303 should be sufficient to result in a comprehensive discussion of a three-year trend without a year-to-year comparison.

Disclosure Effectiveness Initiative: A few commenters recommended eliminating prior period results in MD&A as this information is readily available in previous filings.[339] One of these commenters stated it would be more appropriate to require a discussion of only the most recently completed annual or quarterly period and that discussion of prior periods "can create more confusion and distraction than elucidation among investors." [340] Another one of these commenters stated its belief that two years of financial statements is sufficient disclosure as the five-year selected financial data would provide multiyear trend information.[341] This commenter also stated its belief that a two year financial statement requirement would eliminate "clutter" in MD&A and "allow users to focus on new, material information about the latest fiscal year."

One commenter disagreed with eliminating the requirement to include prior-period results in MD&A because doing so would require investors to look for the information elsewhere.[342] One commenter suggested revising Instruction 4 to Item 303(a) to allow registrants to omit a discussion of changes in line items on the financial statements, to the extent those changes are not material and such omission would not materially impair an investor's understanding of the registrant's results of operations.[343]

b. Discussion

Prior to the Commission's adoption of the MD&A disclosure requirements, Guide 22 and Guide 1 called for a summary of earnings and operations, as well as a full narrative explanation of the summary. The Guides also called for a separate discussion and analysis of the summary, including explanations of material changes from period to period in revenues and expenses.[344] This discussion was intended to enable investors to compare periodic results of operations and to assess the source and probability of recurrence of earnings or losses.[345] When adding MD&A to Regulation S–K in 1980, the Commission eliminated the summary of operations disclosure in favor of new requirements for a discussion "focused on the financial statements" with an emphasis on favorable or unfavorable trends and the identification of significant events or uncertainties.[346] The Commission also expressed its view that a three-year financial statement requirement provides the minimum data necessary for an understanding of the changes in performance for two years.[347]

In 2003, the staff conducted a review of annual reports filed by all Fortune 500 registrants and issued a significant number of comments seeking, among other things, greater analysis of registrants' results of operation.[348] The staff also discouraged registrants from providing rote calculations of percentage changes of financial statement items and boilerplate explanations of immaterial changes to these figures, encouraging them to include instead a detailed analysis of material year-to-year changes and trends.[349] The staff continues to seek greater analysis of material year-to-year changes and trends by encouraging registrants to quantify components of material changes in financial statement line items and provide additional explanation of the underlying factors that cause such changes.

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[332] Item 303(a)(3)(i) of Regulation S–K [17 CFR 229.303(a)(3)(i)].

[333] Item 303(a)(3)(ii) of Regulation S–K [17 CFR 229.303(a)(3)(ii)].

[334] Item 303(a)(3)(iii) of Regulation S–K [17 CFR 229.303(a)(3)(iii)].

[335] Item 303(a)(3)(iv) of Regulation S–K [17 CFR 229.303(a)(3)(iv)].

[336] SRCs may limit their disclosure to the two-year period covered by their financial statements. Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[337] Instruction 4 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[338] *See* Ernst & Young 1.

[339] *See, e.g.,* CCMC; IBM; SCSGP (noting that the existing requirements in Item 303 are sufficient to elicit a discussion of trends over the relevant three-year period, if such a trend exists and is material); A. Radin; Ernst & Young 2.

[340] *See* CCMC.

[341] *See* Ernst & Young 2 (also noting that financial statements covering three years are more voluminous and costly to prepare and that most foreign jurisdictions only require two years of financial statements).

[342] *See* CFA Institute.

[343] *See* ABA 2.

[344] Guide 22 applied only to registration statements under the Securities Act. Guide 1, applicable to Exchange Act filings, was adopted in 1974 to require disclosure similar to that of Guide 22. While Guide 22 focused on a summary of earnings, Guide 1 required a discussion and analysis of a registrant's summary of operations. Both Guides were eliminated in 1980 when their requirements were merged into a single requirement, now Item 303, calling for discussion and analysis of financial condition and results of operations. This represented a shift in focus towards the financial statements rather than upon a summary of operations. *See* Guidelines Adopting Release. When eliminating the Guides, the Commission noted that the "narrow approach" set forth in Guides 1 and 22 did not ordinarily produce a discussion that focused upon the financial condition of a registrant as a whole. The Commission also noted that "there is a growing need to analyze an enterprise's liquidity and capital resources, in addition to its revenues and income." *See* 1980 Form 10–K Adopting Release at 63636.

[345] *See* Guidelines Adopting Release.

[346] 1980 Form 10–K Adopting Release at 63636.

[347] *See* Uniform Instructions as to Financial Statements—Regulation S–X, Release No. 33–6179 (Jan. 15, 1980) [45 FR 5963 (Jan. 24, 1980)].

c. Request for Comment

107. Should we retain, eliminate or modify the period-to-period comparisons provided in MD&A? Why?

108. How could Item 303(a)(3) be improved? Would any additional disclosure about a registrant's results of operations be important to investors? If so, what additional disclosure would be important and why?

109. Does the three-year comparison provide material information about trends or uncertainties that would not be reflected in filings for prior periods? Should we permit registrants to omit the earliest period in the three-year comparison when the earliest of the three years does not provide information that is important to investors? What would be the advantages and disadvantages of limiting the period-to-period comparisons in MD&A to the most recent two fiscal periods?

110. Should we allow registrants to eliminate the earliest of the two periods discussed so long as they cross-reference or include a hyperlink to the prior periods discussion in earlier Forms 10–K and 10–Q? Why or why not?

111. In complying with Item 303(a)(3), registrants almost exclusively rely on period-to-period comparisons even though our rules permit "any other format that in the registrant's judgment would enhance a reader's understanding." [350] Why do registrants rely almost exclusively on year-to-year comparisons? Would formats or presentations other than period-to-period comparisons enhance a reader's understanding of results of operations or encourage greater analysis of the income statement? If so, how? What other formats or presentations could result in a discussion and analysis of the material information necessary to an understanding of a registrant's performance, financial condition and prospects for the future? Should we require registrants to provide the comparison in a standardized tabular format or any other format?

112. Does the disclosure required by Item 303(a)(3) provide useful information about registrants that have not yet generated revenue or begun operations? Would additional disclosure about these registrants, such as a description of their plans of operations be more useful to investors? If so, what additional information, if any, that is not already required under Item 101(a)(2) would be useful to investors? [351]

5. Liquidity and Capital Resources (Item 303(a)(1) and (a)(2))

Analysis of a registrant's liquidity and capital resources is critical to assessing a registrant's future prospects.[352] Item 303(a)(1) requires a registrant to identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.[353] If a material deficiency is identified, a registrant must indicate the course of action it has taken or proposes to take to remedy the deficiency.[354] Item 303(a)(1) also requires a registrant to identify and separately describe its internal and external sources of liquidity and briefly discuss any material unused sources of liquid assets.[355]

Item 303(a)(2) requires discussion and analysis of a registrant's capital resources. A registrant must describe its material commitments for capital expenditures and indicate the general purpose of those commitments and the anticipated source of funds needed to fulfill those commitments.[356] A registrant also must describe any known material trends, favorable or unfavorable, in its capital resources, including changes in equity, debt and any off-balance sheet financing arrangements.[357]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter generally suggested requiring increased disclosure of liquidity funding gaps.[358]

b. Analysis of "Liquidity" and "Capital Resources"

i. Discussion

The Commission first adopted requirements for disclosure of liquidity and capital resources in 1980 to address what it viewed as a growing need to analyze enterprise liquidity and capital resources in addition to revenues and income.[359] More recently, the Commission has observed that disclosure about liquidity and capital resources is critical to an assessment of a registrant's prospects for the future and even the likelihood of its survival.[360] The Commission also has provided guidance regarding the type of information that a registrant should disclose about its liquidity and capital resources.[361] In determining appropriate disclosure, registrants should evaluate separately their ability to meet upcoming cash requirements over both the short and long term.[362] Registrants are expected to use the statement of cash flows and other indicators in analyzing their liquidity and to present a balanced discussion dealing with cash flows from investing and financing activities as well as from operations.[363]

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[348] *See Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortunate 500 Companies* (2003), *available at https://www.sec.gov/divisions/corpfin/fortune500rep.htm.*

[349] *See id.* The staff also commented on boilerplate analyses that did not provide any insight into registrants' past performance or business prospects as understood by management.

[350] Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)] states the discussion must cover the three-year period covered by the financial statements and use year-to-year comparisons or any other format that in the registrant's judgment would enhance a reader's understanding.

[351] Item 101(a)(2) requires first-time registrants that have not generated revenues from operations in each of the last three fiscal years and are offering securities to the public to provide a plan of operations. The item requires disclosure relating to the registrant's ability to fund its operations, research and development, anticipated material acquisition of plant and equipment, and any anticipated material changes in number of employees.

[352] *See* 2003 MD&A Interpretive Release.

[353] Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)]. The two-step test for disclosure of prospective information set forth in the 1989 MD&A Interpretive Release also applies to disclosure of a known trend, demand, commitment, event or uncertainty materially affecting liquidity and capital resources. *See supra* note 319 and accompanying text.

[354] Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)].

[355] *Id.*

[356] Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[357] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[358] *See* CFA Institute.

[359] *See* 1980 Form 10–K Adopting Release.

[360] *See* 2003 MD&A Interpretive Release. *See also* 2010 Liquidity and Capital Resources Interpretive Release (stating that as financing activities undertaken by registrants become more diverse and complex, it is increasingly important that the discussion and analysis of liquidity and capital resources provided by registrants meet the objectives of MD&A).

[361] *See, e.g.*, 1989 MD&A Interpretive Release and 2003 MD&A Interpretive Release.

[362] *See id.*

Despite the Commission's guidance, the staff has observed that discussions of liquidity and capital resources often recite various changes in line items from the statement of cash flows without a detailed analysis. Although registrants generally discuss their liquidity needs and the sources of cash available to meet those needs as of the end of the reporting period, disclosure of known trends and uncertainties affecting their future needs and availability of cash often is less detailed.

When adopting disclosure requirements for liquidity and capital resources, the Commission recognized that the terms "liquidity" and "capital resources" lacked precision in definition but stated that "additional specificity would decrease the flexibility needed by management for a meaningful discussion." [364] The Commission stated its intent for management to use "whatever liquidity parameters they deem to be most appropriate." [365] To that end, Item 303 does not define "capital resources" and defines "liquidity" only in general terms, as the ability of an enterprise to generate adequate amounts of cash to meet its needs for cash.[366]

ii. Request for Comment

113. How could we revise Item 303(a) to elicit a more meaningful analysis of a registrant's liquidity and capital resources while retaining the flexibility of registrants to analyze liquidity and capital resources in the context of their business and the way they manage liquidity?

114. Item 303(a) provides that discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Would it lead to more useful analysis if we required registrants to provide separate disclosure of these two topics? Why? Would doing so encourage greater disclosure of trends, events and uncertainties affecting capital resources?

115. When drafting MD&A, how do registrants currently interpret the term "capital resources"? Would defining the term "capital resources" be helpful for registrants or, alternatively, is the plain meaning of the term sufficiently clear? In light of the reference to capital expenditures and the sources of funds needed to fulfill those expenditures in Item 303(a)(2)(i), do registrants currently interpret the term "capital resources" as including mostly funds committed for material capital expenditures and the source of those funds?

116. Should we modify the definition of "liquidity" in Instruction 5 to Item 303(a) and, if so, how?

117. For what periods should we require discussion and analysis of liquidity and capital resources and why? Should our requirements include more periods than what is required by the statement of cash flows? Why? Are developments in the most recent fiscal year sufficient to constitute a "trend" as the term is used in Item 303?

118. Should we require registrants to provide a sensitivity analysis in the discussion and analysis of liquidity and capital resources? If so, what should be the nature of such an analysis? If not, why not?

119. Should the registrant provide additional measures of intra-period liquidity and capital resources? For example, should the registrant provide measures of average daily liquidity, average quarterly liquidity, or other measures? Should the registrant provide a chart or graph of intra-period liquidity? How should such information be considered in connection with the information provided at the end of the quarter?

120. Should we consider more detailed disclosure requirements for liquidity, such as liquidity risks and maturity mismatches?

c. Short-Term Borrowings

i. Discussion

Access to short-term borrowings for working capital and to fund operations can be an important component of a registrant's liquidity and capital resources.[367] Short-term borrowings include federal funds purchased and securities sold under agreements to repurchase,[368] commercial paper,[369] borrowings from banks, borrowings from factors or other financial institutions, and any other short-term borrowings reflected on the registrant's balance sheet.[370]

Short-term borrowings are common among financial institutions and industrial companies alike.[371] In the last few years, low interest rates have prompted many non-financial registrants to take advantage of lower borrowing costs and use short-term borrowings to, among other things, buy back stock and pay off longer-term debt.[372] For one type of short-term borrowing, repurchase agreements, advancements in technology and changes in the regulatory landscape have made it more efficient for parties to engage in these transactions, likely increasing the amount of activity in this market.[373]

Short-term borrowings can be affected, sometimes severely and rapidly, by illiquidity in the markets as a whole.[374] This market illiquidity can

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[363] *See* 1989 MD&A Interpretive Release.

[364] 1980 Form 10–K Adopting Release at 63636.

[365] *Id.* at 63636.

[366] Instruction 5 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)]. *See also* 1980 Form 10–K Adopting Release.

[367] *See* D. Booth & J. Renier, *Fed Policy in the Financial Crisis: Arresting the Adverse Feedback Loop,* FRBD Economic Letter, Sept. 2009, *available at https://www.dallasfed.org/assets/documents/research/eclett/2009/el0907.pdf* ("Many businesses were hampered by the squeeze on short-term financing, a key source of working capital needed to prevent deeper reductions in inventories, jobs and wages.").

[368] ASC 860–10 defines a repurchase agreement as an arrangement under which the transferor (repo party) transfers a security to the transferee (repo counterparty or reverse party) in exchange for cash and concurrently agrees to reacquire the security at a future date for an amount equal to the cash exchanged plus a stipulated interest factor.

[369] Commercial paper consists of short-term promissory notes issued primarily by corporations. Maturities range up to 270 days but average about 30 days.

[370] *See* Rules 5–19 and 9–03.13(3) of Regulation S–X [17 CFR 210.5–19 and 210.9–03.13(3)].

[371] For example, the Federal Reserve Board reported that domestic outstanding commercial paper balances at the end of December 2015 were $174.5 billion for non-financial issuers and $206.6 billion for financial issuers respectively. *See Commercial Paper Outstanding* (last visited March 21, 2016) *available at https://www.federalreserve.gov/releases/cp/outstanding.htm.*

[372] *See, e.g.,* David Randall, *Fed Delay Could Spur More Debt Issues to Fund Share Buybacks,* Reuters, Sept. 23, 2015, *available at http://www.reuters.com/article/2015/09/23/us-usa-fed-buybacks-analysis-idUSKCN0RN0D320150923* (suggesting the Federal Reserve's decision to delay raising interest rates will likely encourage companies to incur more debt to repurchase their own shares); Serena Ng and Vipal Monda *Companies Use Short-Term Debt to Advantage,* The Wall Street Journal, Sept. 11, 2013, *available at http://www.wsj.com/articles/SB10001424127887323893004579059473557078830* (noting that the low cost of short-term funds due to low interest rates has prompted companies to engage in short-term borrowings to repurchase stock, fund acquisitions, pay off longer-term debt, or profit from the gap between short and long-term interest rates); John Atkins, *Economy: Short-term Business Borrowing Hits Highest Level Since 2001,* Forbes, Feb. 22, 2013, *available at http://www.forbes.com/sites/spleverage/2013/02/22/economy-short-term-business-borrowing-hits-highest-level-since-2001.*

[373] *See* Victoria Baklanova, Adam Copeland, and Rebeca McCaughrin, *Reference Guide to U.S. Repo and Securities Lending Markets,* Federal Reserve Bank of NY Staff Report, Sept. 2015, *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr740.pdf,* at 16 (noting that, while dealers appear to represent the largest participants in the market for repurchase agreements, non-dealer activity has likely increased such as through service providers that allow non-dealer counterparties to engage directly in a repurchase agreement without an intermediary).

[374] *See* Philip E. Strahan, *Liquidity Risk and Credit in the Financial Crisis,* FRBSF Economic Letter (May 14, 2012), *available at http://www.frbsf.org/economic-research/publications/economic-letter/2012/may/liquidity-risk-credit-financial-crisis/. See also,* Adonis Antoniades, *Liquidity Risk and the Credit Crunch of 2007–2008: Evidence from Micro-Level Data on Mortgage Loan Applications,* Dec. 2014, *available at http://www.bis.org/publ/*

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present increased risks to registrants who rely on short-term borrowings.[375] Due to their short-term nature, a registrant's use of such arrangements can fluctuate significantly during a reporting period. As a result, presentation of period-end amounts of short-term borrowings alone may not accurately capture a registrant's funding needs or use of such borrowings during the relevant period.[376]

Our rules require a liquidity analysis on both a long-term and short-term basis.[377] The Commission has stated that registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity.[378] In addition, the Commission and its staff have provided guidance that certain registrants should disclose short-term borrowings to the extent relevant and material to the operations of the entity.[379]

The Commission has previously considered the applicability of short-term borrowing disclosure requirements for all registrants. In 1994, in connection with the elimination of various financial statement disclosure schedules, the Commission eliminated a short-term borrowings disclosure requirement for registrants that were not bank holding companies.[380] Former Rule 12–10 of Regulation S–X required those registrants to include with their financial statements a schedule of short-term borrowings that disclosed the maximum amount outstanding during the year, the average amount outstanding during the year, and the weighted-average interest rate during the period, with amounts broken out into specified categories of short-term borrowings.[381] In proposing to eliminate this schedule, the Commission noted "the disclosures concerning the registrant's liquidity and capital resources that are required in the MD&A would appear to be sufficiently informational to permit elimination of the short term borrowing schedule."[382] In repealing Rule 12–10, the Commission "concluded that the costs of furnishing the information outweigh[ed] its usefulness."[383]

In 2010, the Commission proposed new disclosure requirements for short-term borrowings.[384] When proposing these rules, the Commission stated its belief that they differed from former Rule 12–10 by, among other things, requiring short-term borrowings disclosure in MD&A, in tabular form, alongside a discussion and analysis to provide context for the quantitative data.[385] Some commenters expressed concern about these proposed rules and emphasized the costs associated with compliance, which they asserted would outweigh the usefulness of the disclosure. A significant number of commenters were financial institutions[386] and related organizations,[387] with only a small number of investors submitting comments.[388] While the Commission did not adopt these rules, there have been other regulatory actions relating to short-term borrowings disclosure.[389]

While a number of commenters generally supported the proposed rules' objectives of greater transparency of short-term borrowings as part of a registrant's overall liquidity profile, they also expressed numerous concerns about the quantitative requirements of the proposed rule. For example, commenters were opposed to the

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work473.pdf; Marcia Millon Cornett, Jamie John McNutt, Philip E. Strahan, Hassan Tehranian, *Liquidity Risk Management and Credit Supply in the Financial Crisis,* 101 J. Fin. Econ. (2011), 297–312; Jose Berrospide, *Bank Liquidity Hoarding and the Financial Crisis: An Empirical Evaluation,* Federal Reserve Board Finance and Economics Discussion Series, Nov. 29, 2012; A. Martin et al., Repo Runs, FRBNY Staff Report No. 444 (Apr. 2010) (demonstrating that institutions funded by short-term collateralized borrowings are subject to the threat of runs similar to those faced by commercial banks).

[375] For instance, financing rates may increase or terms may become unfavorable, it may become more costly or impossible to roll over short-term borrowings, or for financial institutions, demand depositors may withdraw funds. *See, e.g.,* Gary B. Gorton, Andrew Metrick, Lei Xie, *The Flight from Maturity,* Yale School of Management May 2015–, *available at http://www.nber.org/papers/w20027.pdf.*; M. Brunnermeier, *Deciphering the Liquidity and Credit Crunch 2007–2008,* 23 J. Econ. Persp. 77 (2009), at 79–80, *available at https://www.princeton.edu/~markus/research/papers/liquidity_credit_crunch.pdf.*

[376] *See* Short-Term Borrowings Disclosure, Release No. 33–9143 (Sept. 17, 2010) [75 FR 59866 (Sept. 28, 2010)] ("Short-Term Borrowings Proposing Release").

[377] Instruction 3 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[378] *See* 2002 Commission Statement about MD&A at 3748 ("MD&A disclosures should not be overly general. For example, disclosure that the registrant has sufficient short-term funding to meet its liquidity needs for the next year provides little useful information. Instead, registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity.").

[379] *See* 2010 Liquidity and Capital Resources Interpretive Release at 59895 (stating that, "if the registrant's financial statements do not adequately convey the registrant's financing arrangements during the period, or the impact of those arrangements on liquidity, because of a known trend, demand, commitment, event or uncertainty, additional narrative disclosure should be considered and may be required to enable an understanding of the amounts depicted in the financial statements"); Industry Guide 3, Statistical Disclosure by Bank Holding Companies ("Industry Guide 3"), *available at https://www.sec.gov/about/forms/industryguides.pdf*; and Staff Accounting Bulletin, Topic 11:K (Application of Article 9 and Industry Guide 3), *available at https://www.sec.gov/interps/account/sabcodet11.htm* ("In the staff's view, Article 9 [of Regulation S–X] and Guide 3, while applying literally only to bank holding companies, provide useful guidance to certain other registrants . . . Thus, to the extent particular guidance is relevant and material to the operations of an entity, the staff believes the specified information, or comparable data, should be provided.").

[380] *See* Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules, Release No. 33–7118 (Dec. 13, 1994) [59 FR 65632 (Dec. 20, 1994)] ("Financial Schedules Adopting Release").

[381] The categories in former Rule 12–10 were amounts payable to: Banks for borrowings; factors or other financial institutions for borrowings; and holders of commercial paper.

[382] *See* Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules, Release No. 33–7055 (Apr. 19, 1994) [59 FR 21814 (Apr. 26, 1994)] at 21818.

[383] *See* Financial Schedules Adopting Release at 65635.

[384] *See* Short-Term Borrowings Proposing Release. As proposed, these rules would have codified the provisions in Industry Guide 3 for disclosure of short-term borrowings in Regulation S–K for all registrants. These proposed rules were intended to provide important information so investors could better understand the role of short-term financing and the related risks to the registrant. At that time, the Commission proposed amending its MD&A requirements to include a new section that would provide tabular information of a registrant's short-term borrowings, as well as a discussion and analysis of these borrowings. These proposed amendments would have (i) expanded the Industry Guide 3 provisions for disclosure of short-term borrowings in Regulation S–K, (ii) required disclosure on an annual and quarterly basis, and (iii) expanded Industry Guide 3 disclosure to all registrants that provide an MD&A. If the proposals had been adopted, the Commission would have authorized the staff to eliminate the corresponding provisions of Industry Guide 3 to avoid redundant disclosure requirements. *See id.* at 59868, footnote note 21 and accompanying text.

[385] *See id.*

[386] *See, e.g.,* comment letters to File No. S7–22–10 from Credit Suisse Group AG (Nov. 29, 2010), Barclays Bank PLC (Nov. 29, 2010), JP Morgan Chase & Co. (Nov. 29, 2010), Morgan Stanley (Nov. 29, 2010) and Citigroup Inc. (Nov. 29, 2010) *available at http://www.sec.gov/comments/s7-22-10/s72210.shtml.*

[387] *See, e.g.,* comment letters to File No. S7–22–10 from the American Bankers Association (Nov. 29, 2010) and British Bankers' Associations (Dec. 1, 2010).

[388] *See* comment letters to File No. S7–22–10 from Fidelity Management & Research Company (Nov. 29, 2010), Doug Morgan (Sept. 20, 2010) and Yong Zheng (Dec. 13, 2010). Fidelity supported the proposed requirements and recommended "more granular disclosure on repo portfolios." Some of Fidelity's recommendations have since been addressed by revised FASB guidance on accounting for repurchase financings. Registrants currently are required to disclose information on transfers accounted for as sales in transactions that are economically similar to repurchase agreements. In addition, registrants must provide increased transparency about the types of collateral pledged in repurchase agreements and similar transactions accounted for as secured borrowings. *See* ASU 2014–11 "Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures."

[389] *See supra* note 388. *See also* 2010 Liquidity and Capital Resources Interpretive Release.

proposed requirement to further disaggregate amounts in the table by currency, interest rate or other meaningful category[390] as well as the proposed requirement to disclose all categories of short-term borrowings by eliminating a threshold for allowing aggregation into categories.[391]

ii. Request for Comment

121. Do current disclosure requirements under Item 303 elicit adequate disclosure of a registrant's reliance on short-term borrowings?

122. Should we revise Item 303 to require specific line-item disclosure of a registrant's use and analysis of short-term borrowings as a source of funding? Are there aspects of the 2010 proposal we should revisit? Would doing so lead to any additional disclosure or analysis that registrants do not already provide under current requirements and guidance? Should we consider other qualitative or quantitative measures for disclosure of short-term borrowings? If so, what measures should we consider?

123. Should we consider different disclosure requirements for financial institutions versus non-financial institutions? If so, which disclosure should we require and why?

124. Should we require registrants to provide chart or graph of its short-term borrowings?

6. Off-Balance Sheet Arrangements (Item 303(a)(4))

Item 303(a)(4) requires, in a separately-captioned section, disclosure of a registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.[392] To the extent necessary to an understanding of such arrangements and effect, registrants must disclose the following items and such other information that the registrant believes is necessary for such an understanding:

- The nature and business purpose of such off-balance sheet arrangements;
- the importance to the registrant of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits;
- the amounts of revenues, expenses and cash flows arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise; and
- any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability of a registrant's off-balance sheet arrangements that provide material benefits, and the course of action that the registrant has taken or proposes to take in response to any such circumstances.

Item 303(a)(4)(ii) defines off-balance sheet arrangements as certain guarantees, retained or contingent interests in assets transferred to an unconsolidated entity, obligations under certain derivative instruments,[393] and variable interests in an unconsolidated entity.

a. Comments Received

S–K Study. One commenter stated that disclosure of off-balance sheet arrangements was redundant with financial statement disclosure requirements.[394]

Disclosure Effectiveness Initiative. A few commenters stated that disclosure of off-balance sheet arrangements was redundant of disclosure in the financial statements.[395] These commenters suggested either eliminating this requirement or expressly allowing registrants to cross-reference to the disclosure in the financial statements. One of these commenters also noted that disclosures under this item are "generally boilerplate and/or redundant" and recommended a more "principles-based" approach to this disclosure.[396] One commenter listed off-balance sheet disclosure as "some of the most challenging disclosures" that could be improved.[397]

b. Discussion

The Sarbanes-Oxley Act required the Commission to adopt rules providing that each annual and quarterly financial report required to be filed with the Commission must include disclosure about off-balance sheet arrangements.[398] Earlier in 2002, prior to enactment of the Sarbanes-Oxley Act, the Commission issued a statement on the desirability of enhanced disclosure in MD&A of off-balance sheet arrangements.[399] Much of the language and many of the concepts in the Sarbanes-Oxley Act were consistent with the language and concepts in this Commission statement.[400]

In its 2002 statement, the Commission noted that off-balance sheet arrangements often are integral to both liquidity and capital resources and that registrants should "consider all of these items together, as well as individually," when drafting MD&A disclosure.[401] The Commission further noted that off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities should be discussed pursuant to Item 303(a) when they are "reasonably likely to affect materially liquidity or the availability of or requirements for capital resources." [402]

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[390] *See* comment letters to File No. S7–22–10 from the American Bar Association (Dec. 17, 2010), American Bankers Association (Nov. 29, 2010), Barclays Bank PLC (Nov. 29, 2010), Citigroup Inc. (Nov. 29, 2010), Cleary Gottlieb Steen & Hamilton LLP (Nov. 29, 2010), Chevron Corp. (Nov. 16, 2010), Credit Suisse Group AG (Nov. 29, 2010), Institute of Management Accountants (Nov. 16, 2010), New York City Bar Association (Nov. 29, 2010), Regions Financial Corp. (Nov. 29, 2010), UBS AG (Nov. 29, 2010).

[391] *See* comment letters to File No. S7–22–10 from the American Bankers Association (Nov. 29, 2010), Barclays Bank PLC (Nov. 29, 2010), Cleary Gottlieb Steen & Hamilton LLP (Nov. 29, 2010), Davis Polk & Wardwell LLP (Nov. 29, 2010), Institute of Management Accountants (Nov. 16, 2010), Morgan Stanley (Nov. 29, 2010), Regions Financial Corp. (Nov. 29, 2010), Barclays Bank PLC (Nov. 29, 2010), Ford Motor Company (Nov. 29, 2010), BDO USA LLP (Nov. 22, 2010) and American Bar Association (Dec. 17, 2010).

The proposed rule was a change from existing Industry Guide 3 instructions, which allows categories of short-term borrowings to be aggregated where they do not exceed thirty percent of the company's stockholders' equity at the end of the period. Instruction to Item VII of Industry Guide 3.

[392] Item 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[393] For registrants whose financial statements are prepared in accordance with U.S. GAAP, the definition includes a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in the registrant's statement of stockholders' equity. *See* ASC 815–10–15–74. For other registrants, the definition includes derivative instruments that are both indexed to the registrant's own stock and classified in stockholders' equity, or not reflected, in the company's statement of financial position.

[394] *See* Ernst & Young 1.

[395] *See, e.g.,* CCMC, SCSGP, ABA 1, and ABA 2.

[396] *See* ABA 1. For example, this commenter suggested requiring registrants to disclose the potential impact on the registrant of the acceleration or increase of material off-balance sheet arrangements.

[397] *See* CFA Institute. This commenter did not provide specific recommendations on how to improve this disclosure.

[398] Section 401(a) of the Sarbanes-Oxley Act added Section 13(j) to the Exchange Act [15 U.S.C. 78m(j)], which directed the Commission to adopt rules requiring each annual and quarterly financial report filed with the Commission to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses."

[399] *See* 2002 Commission Statement about MD&A.

[400] *See id. See also* Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Release No. 33–8144, Nov. 4, 2002 [67 FR 68054 (Nov. 8, 2002)] ("Off-Balance Sheet and Contractual Obligations Proposing Release").

The 2002 statement was consistent with Commission rules and guidance existing at the time. For example, Item 303(a)(2)(ii) specifically required registrants to disclose off-balance sheet financing arrangements in their discussion of capital resources.[403] Similarly, the 1989 MD&A Interpretive Release indicated that a registrant's discussion of long-term liquidity and long-term capital resources must address demands or commitments, including any off-balance sheet items.[404]

In response to the Sarbanes-Oxley Act, the Commission adopted more specific disclosure requirements for off-balance sheet arrangements in 2003.[405] When adopting these rules, the Commission reiterated that, while only one item in its MD&A rules specifically identifies off-balance sheet arrangements,[406] other requirements "clearly require disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition or results of operations." [407] The new rules were intended to clarify the disclosures that registrants must make about off-balance sheet arrangements and required registrants to provide those disclosures in a separately designated section of MD&A.[408]

In 2004, as part of a broader effort to expand the events that registrants must report on a current basis, the Commission adopted additional requirements for disclosing off-balance sheet arrangements on Form 8–K.[409] These new provisions of Form 8–K, which remain in effect today, require registrants to file a report upon the creation of a direct financial obligation or an obligation under an off-balance sheet arrangement (Item 2.03) and to file a report if a triggering event occurs that causes the increase or acceleration of a such an obligation and the consequences of the event are material to the registrant (Item 2.04).[410] While the Form 8–K requirements rely on the definition of "off-balance sheet arrangement" in Item 303(a)(4)(ii), the substance of the disclosure is different. Unlike Item 303(a)(4), Form 8–K does not require registrants to provide an analysis of off-balance sheet arrangements or their importance to the registrant.

In the proposing release for Item 303(a)(4), the Commission recognized that parts of the proposed off-balance sheet disclosure requirements might overlap with disclosure presented in the footnotes to the financial statements. The Commission stated that the proposed rules were designed to provide more comprehensive information and analysis in MD&A than what was provided in the footnotes.[411]

Since the adoption of Item 303(a)(4), the FASB has issued additional requirements that further overlap with this item.[412] Currently, U.S. GAAP requires disclosure about transactions or arrangements that overlap with Item 303(a)(4)'s definition of off-balance sheet arrangements. For example, U.S. GAAP requires disclosure in the notes to the financial statements of the nature and amount of a guarantee,[413] retained or contingent interests in assets transferred to unconsolidated entities,[414] pertinent information of derivative instruments that are classified as stockholder's equity under U.S. GAAP,[415] and obligations under variable interests in unconsolidated entities.[416]

Because of this overlap, in response to Item 303(a)(4), registrants often provide cross-references to the relevant notes to their financial statements or provide disclosure that is duplicative of information in the notes. While many of the requirements in Item 303(a)(4) overlap with U.S. GAAP, some of the requirements related to the location, presentation and nature of the disclosure are not the same. Additionally, Item 303(a)(4) disclosure is not audited.

Location of Disclosure. In its 2002 statement, the Commission observed that investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the filing.[417] In proposing the off-balance sheet disclosure requirements, the Commission identified as one of its objectives to provide investors with information necessary to understand a registrant's off-balance sheet arrangements that are neither readily apparent nor easily understood from reading the financial statements alone.[418]

Item 303(a)(4)(i) specifies that off-balance sheet arrangements should be discussed in a separately-captioned section. The instructions to Item 303(a)(4) permit that discussion to cross-reference to information provided in the footnotes to the financial statements, rather than repeat it, provided that the MD&A disclosure integrates the substance of the footnotes in a manner designed to inform readers of the significance of the information that is cross-referenced.[419] By contrast, U.S. GAAP does not prescribe the location of these disclosures, which may be dispersed throughout the notes to the financial statements. However, interactive data allows investors to isolate disclosures about off-balance sheet arrangements even when it is dispersed within the notes to the financial statements.

Presentation of Disclosure. Item 303(a)(4) requires disclosure for the most recent period and a discussion of changes from the previous year where necessary to an understanding of the disclosure.[420] U.S. GAAP does not require discussion of changes from the previous year.

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[401] *See* 2002 Commission Statement about MD&A at 3748.

[402] *See id.* at 3748.

[403] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)]. The item specifies that the discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

[404] *See* 1989 MD&A Interpretive Release at 22431 ("The discussion of long-term liquidity and long-term capital resources must address material capital expenditures, significant balloon payments or other payments due on long-term obligations, and other demands or commitments, including any off-balance sheet items, to be incurred beyond the next 12 months, as well as the proposed sources of funding required to satisfy such obligations.").

[405] *See* Off-Balance Sheet and Contractual Obligations Adopting Release.

[406] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[407] *See* Off-Balance Sheet and Contractual Obligations Adopting Release at 5983.

[408] *See id.*

[409] *See* 2004 Form 8–K Adopting Release.

[410] 17 CFR 249.308.

[411] *See* Off-Balance Sheet and Contractual Obligations Proposing Release.

[412] In June 2009, the FASB issued SFAS No. 166, *Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140,* which requires enhanced disclosures about transfers of financial assets and a transferor's continuing involvement with transfers of financial assets accounted for as sales. Also in June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R),* which requires enhanced disclosures about an enterprise's involvement in a variable interest entity, including unconsolidated entities. SFAS No. 166 and 167 have been codified as ASC Topics 860 (Transfers and Servicing) and 810 (Consolidation), respectively.

[413] *See* ASC 460–10–50.

[414] *See* ASC 860–10–50–3, ASC 860–20–50.

[415] *See* ASC 815–40–50–5, ASC 505–10–50.

[416] *See* ASC 810–10–50–4.

[417] *See* 2002 Commission Statement about MD&A.

[418] *See* Off-Balance Sheet and Contractual Obligations Proposing Release.

[419] Instruction 5 to Item 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[420] Instruction 4 to Item 303(a)(4) [17 CFR 229.303(a)(4)].

Nature of Disclosures. While Item 303(a)(4) and U.S. GAAP both require disclosure of the nature and amounts associated with off-balance sheet arrangements, Regulation S–K requires additional disclosure about the business purpose of the off-balance sheet arrangement[421] and the importance of the off-balance sheet arrangement to the registrant's liquidity, capital resources, market risk support, credit risk support, and other benefits.[422] Item 303(a)(4) also requires disclosure of any known event, demand, commitment, trend, or uncertainty that will result in or is reasonably likely to result in the termination or material reduction in the availability of material off-balance sheet arrangements to the registrant and the course of action the registrant has taken or proposes to take to address such circumstances. U.S. GAAP does not require this disclosure.

c. Request for Comment

125. Does Item 303(a)(4) elicit disclosure that is important to investors? Is this information otherwise available in Commission filings?

126. If we retain the disclosure requirements in Item 303(a)(4), should we expand the disclosure required by this item? If so, what additional disclosure would be important to investors and why? For example, should we revise our rules to require registrants to analyze the risks and financial potential associated with its off-balance sheet arrangements?

127. If we retain the disclosure requirements in Item 303(a)(4), should this information be located in MD&A, the notes to the financial statements, or both? Is the location of the disclosure important? Are there challenges associated with auditing this information?

128. If we eliminate Item 303(a)(4), do the other requirements in Item 303 and the requirements in U.S. GAAP require adequate disclosure in terms of the location, presentation and nature of information about off-balance sheet arrangements? Would eliminating Item 304(a)(4) result in costs to investors?

129. In the adopting release for Item 303(a)(4), the Commission noted that "[t]he MD&A rules already require disclosure regarding off-balance sheet arrangements and other contingencies."[423] Do the disclosure requirements in Item 303 regarding liquidity and capital resources require adequate disclosure about matters that will result in or is reasonably likely to result in the termination or material reduction in the availability of material off-balance sheet arrangements to the registrant and the course of action the registrant has taken or proposes to take to address such circumstances?

130. Should we require additional disclosure of off-balance sheet arrangements that occurred during a reporting period, such as an exhibit identifying all such arrangements?

7. Contractual Obligations (Item 303(a)(5))

Item 303(a)(5) requires tabular disclosure of a registrant's known contractual obligations for long-term debt, capital leases, operating leases, purchase obligations and other long-term liabilities reflected on the registrant's balance sheet under U.S. GAAP.[424] The Commission has defined the first three categories of obligations (long-term debt, capital leases and operating leases) by reference to the relevant U.S. GAAP accounting pronouncements that require disclosure of these obligations in the financial statements or notes thereto.[425]

For purchase obligations, the Commission defined this term as an agreement to purchase goods or services that is enforceable, legally binding on the registrant and specifies all significant terms.[426] The Commission stated that the definition of "purchase obligations" is designed to capture the registrant's capital expenditures for purchases of goods or services over a five-year period.[427] Some purchase obligations are executory contracts, and therefore are not recognized as liabilities in accordance with U.S. GAAP.[428]

The fifth category of contractual obligations, "Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP," captures all other long-term liabilities that are reflected on the registrant's balance sheet under the registrant's applicable U.S. GAAP. Common examples of other obligations disclosed in this line-item of the table include postretirement benefits, interest on debt, and tax liabilities for uncertain tax positions.

Item 303(a)(5) requires registrants to disclose the amounts of payments due by specified time periods, aggregated by the type of contractual obligation.[429] Registrants must disclose payments due in less than 1 year, 1–3 years, 3–5 years and more than 5 years, as well as the total, aggregate amount of obligations in each category. Amounts are required to be set forth in the aggregate and there is no materiality qualifier.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter called for improvements in the ability to contextualize the table of contractual obligations, but did not provide additional details.[430] Another commenter recommended that we add an instruction to Item 303(a)(5) indicating that, to the extent disclosure in response to the item is included in the notes to the financial statements, registrants should use cross-references to avoid duplicative disclosure.[431]

b. Discussion

In response to a 2001 petition for an interpretive release,[432] the Commission issued a statement in 2002 recommending that registrants present information about contractual obligations and commercial commitments in a single location within the filing.[433] The statement included a recommended table of contractual obligations resembling that of current Item 303(a)(5).[434] This recommended table became a line-item requirement when the Commission adopted Item 303(a)(5) in 2003.[435]

When adopting Item 303(a)(5), the Commission recognized that much of the disclosure required by this item is addressed under U.S. GAAP requirements.[436] Similarly, disclosure

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[421] Item 303(a)(4)(i)(A) of Regulation S–K [17 CFR 229.303(a)(4)(i)(A)].

[422] Item 303(a)(4)(i)(B) of Regulation S–K [17 CFR 229.303(a)(4)(i)(B)].

[423] *See* Off-Balance Sheet and Contractual Obligations Adopting Release at 5982.

[424] 17 CFR 229.303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)].

[425] Item 303(a)(5)(ii) of Regulation S–K [17 CFR 229.303(a)(5)(ii)] (referring to ASC Topics 470–10–50–1 and 840 in defining the terms "long-term debt obligation," "capital lease obligation" and "operating lease obligation").

[426] Item 303(a)(5)(ii) of Regulation S–K [17 CFR 229.303(a)(5)(ii)].

[427] *See* Off-Balance Sheet and Contractual Obligations Adopting Release.

[428] *See id.*

[429] Item 303(a)(5)(i) of Regulation S–K. Registrants may disaggregate the categories specified in the item and use other categories suitable to their businesses, so long as the presentation includes all of the registrant's obligations that fall within the specified categories.

[430] *See* CFA Institute.

[431] *See* ABA 2.

[432] *See* Petition for Issuance of Interpretive Release Concerning MD&A under Regulation S–K, Item 303, (Dec. 31, 2001), *available at https://www.sec.gov/rules/petitions/petndiscl-12312001.htm.*

[433] *See* 2002 Commission Statement about MD&A.

[434] *See id.* The recommended table included long-term debt, capital lease and operating lease obligations and covered similar periods.

[435] *See* Off-Balance Sheet and Contractual Obligations Adopting Release.

[436] *See* Off-Balance Sheet and Contractual Obligations Adopting Release at 5986 ("The

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about other obligations not required by U.S. GAAP, "such as purchase contracts, may or may not be disclosed, but if disclosed, it is usually dispersed throughout the filing and may not be presented in a consistent manner among registrants." [437]

By providing aggregated information of contractual obligations in a single location and appropriate context for investors to assess the impact of off-balance sheet arrangements with respect to liquidity and capital resources, Item 303(a)(5) was intended to improve transparency of a registrant's short- and long-term liquidity and capital resource needs. This disclosure was also intended to "improve an investor's ability to compare registrants." [438]

The Commission has issued guidance on Item 303(a)(5) on one occasion since its adoption.[439] In a 2010 interpretive release, the Commission noted that registrants and industry groups had raised questions about how to treat a number of items under the contractual obligations requirement, including: interest payments, repurchase agreements, tax liabilities, synthetic leases, and obligations that arise under off-balance sheet arrangements.[440] Because the questions tended to be fact-specific and closely related to a registrant's particular business and circumstances, the Commission declined to provide specific guidance about these items or the presentation of the contractual obligations table. Instead, the Commission noted that the requirement itself permits flexibility and encouraged registrants to develop a presentation method that is clear, understandable and appropriately reflects the categories of obligations that are meaningful in light of its capital structure and business.[441]

The Commission's guidance also explained that tabular disclosure of contractual obligations should be prepared with the goal of presenting a meaningful snapshot of cash requirements arising from contractual payment obligations. Registrants were instructed to highlight any changes in presentation that are made so that investors may use the information to make comparisons from period to period. The Commission suggested that footnotes should be used to provide information necessary for an understanding of the timing and amount of specified contractual obligations. Registrants also should consider additional narrative discussion outside of the table to promote understanding of the tabular data.[442] In practice, however, registrants typically do not include additional narrative with their contractual obligations table.

c. Request for Comment

131. Does the table of contractual obligations present a meaningful snapshot of a registrant's cash requirements for contractual obligations? How could the format of the disclosure in the table be improved? Should we consider an alternative presentation or format for this disclosure?

132. Should we require narrative disclosure to accompany the tabular disclosure? For example, should we require registrants to discuss how they plan to meet current and future obligations disclosed in the table? If so, what additional narrative disclosure would be useful to investors?

133. Item 303(a)(5) was intended to provide aggregated information of contractual obligations in a single location and appropriate context for investors to assess the impact of off-balance sheet arrangements with respect to liquidity and capital resources. Would narrative disclosure improve readers' ability to compare registrants by reconciling the information in the table to information elsewhere in MD&A and financial statements? Should comparability among registrants continue to be a goal? Should we continue to require this disclosure in a single location or is disclosure elicited under U.S. GAAP, in various parts of a registrant's filings, sufficient?

134. Item 303(a)(5) requires disclosure of five categories of contractual obligations. Should we expand the rule to include other categories of contractual obligations and if so, what categories should we consider?

135. Would additional guidance or instructions about how to treat certain types of obligations, such as interest payments, repurchase agreements or tax liabilities, be helpful to registrants in preparing this disclosure? Would such guidance limit the intended flexibility of the rule?

136. In the 2010 Liquidity and Capital Resources Interpretive Release, the Commission suggested that separating amounts in the table into those that are reflected on the balance sheet and those arising from off-balance arrangements might be useful to a clear understanding of the information presented. Should we revise Item 303(a)(5) to require registrants to separate amounts in the table of contractual obligations into those that are reflected on the balance sheet and those arising from off-balance sheet arrangements? Should we require this disclosure pursuant to some threshold amount?

8. Critical Accounting Estimates

A registrant's results of operations, financial condition, and changes to financial condition often depend on estimates involved in applying accounting policies that entail uncertainties and subjectivity. Critical accounting estimates are those accounting judgments and estimates that relate to the items that are material to the financial statements, taken as a whole, and that management believes are most critical—that is, those that are most important to portraying the registrant's financial condition and results and require management's most difficult, subjective or complex judgments.[443] While U.S. GAAP requires financial statement footnote disclosure about accounting policies,[444] Item 303 requires disclosure of trends, events or uncertainties known to management that could materially affect reported financial information. Item 303 does not specifically address critical accounting estimates.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended amending Item 303 to require disclosure about management's significant

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preparation of financial statements in accordance with GAAP already requires registrants to assess payments under all of the above categories of contractual obligations, except for purchase obligations.").

Item 303(a)(5) directly refers to ASC Topics in defining three of the five required categories of contractual obligations that must be included within the table. *See supra* note 425 and accompanying text.

[437] *See* Off-Balance Sheet and Contractual Obligations Adopting Release at 5990.

[438] *Id.* at 5990.

[439] In the 2003 MD&A Interpretive Release, the Commission stated that it was not addressing specifically disclosures of contractual obligations because it had had little experience with companies' application of the new rule, adopted a few months earlier. Nevertheless, the Commission noted that the overall guidance in the 2003 MD&A Interpretive Release is applicable to all MD&A discussions. *See* 2003 MD&A Interpretive Release.

[440] *See* 2010 Liquidity and Capital Resources Interpretive Release.

[441] *See id.* The Commission noted that the staff has observed that divergent practices have developed in connection with Item 303(a)(5) disclosure, with registrants drawing different conclusions about the information to be included in the table, but also acknowledged that the rule permits flexibility so the presentation can reflect company-specific information suitable to a company's business.

[442] *See id.*

[443] *See* Accounting Policies; Cautionary Advice Regarding Disclosure, Release No. 33–8040 (Dec. 12, 2001) [66 FR 65013 (Dec. 17, 2001)] ("Cautionary Advice Release").

[444] *See* ASC Topic 235–10–50–1.

judgments and assumptions underlying its use of critical accounting estimates.[445] This commenter also recommended amending Item 303 to explain that the disclosure about critical accounting estimates required in MD&A is meant to supplement, not duplicate, the information provided in the notes to the financial statements.[446] In addition, this commenter suggested that we consider whether requiring independent auditor negative assurance would enhance the quality of the recommended disclosures by imposing more rigor in its preparation.[447] Another commenter recommended that the Commission work with accounting standard-setters to improve financial statement presentation and related disclosures, such as estimates, judgments and choices.[448] One commenter also suggested that the Commission work with the auditing profession to eliminate descriptions of recent accounting changes for pronouncements that have no effect on a registrant.[449] Another commenter recommended that the Commission coordinate with the FASB to review and clarify the disclosure objectives of critical accounting estimates in MD&A and significant accounting policies in the financial statements to determine whether they provide distinct and useful information and provide guidance on how both requirements should work best.[450]

b. Discussion

In 2001, the Commission encouraged registrants to explain in their MD&A the judgments and uncertainties affecting the application of their critical accounting policies, as well as the likelihood that materially different amounts would be reported under different conditions or using different assumptions.[451] The Commission also stated its intent to consider new rules to elicit more precise disclosures about the critical accounting policies.[452]

In 2002, the Commission proposed new rules that would have required, among other things, disclosure of accounting estimates resulting from the application of critical accounting policies.[453] The proposed rules would have defined a "critical accounting estimate" as an accounting estimate that meets the following two criteria: (i) The accounting estimate must require the registrant to make assumptions about matters that are highly uncertain at the time the accounting estimate is made; and (ii) it must be the case that different estimates that the registrant reasonably could have used for the accounting estimate in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the registrant's financial condition, changes in financial condition or results of operations.[454] As proposed, registrants would have been required to:

- Describe the critical accounting estimates (including the methodology underlying each critical accounting estimate, assumptions about highly uncertain matters and other assumptions that are material) and identify where and how they affect the registrant's reported financial results, financial condition and changes in financial condition;[455]
- provide a better understanding of the sensitivity of the reported operating results and financial condition to changes in the critical accounting estimates or their underlying assumptions;[456] and
- state whether or not senior management discussed the development, selection and disclosure of those critical accounting estimates with the registrant's audit committee.[457]

The Commission did not adopt these rules, but subsequently provided interpretive guidance on disclosure of critical accounting estimates.[458] In the 2003 MD&A Interpretive Release, the Commission stated that registrants should provide disclosure about critical accounting estimates or assumptions in MD&A where:

- The nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and
- the impact of the estimates and assumptions on financial condition or operating performance is material.[459]

The Commission also clarified that this disclosure should supplement, not duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements.[460] While accounting policy notes in the financial statements generally describe the method used to apply an accounting principle, the discussion in MD&A should present a registrant's analysis of the uncertainties involved in applying the principle.[461]

Despite Commission guidance, many registrants repeat the discussion of significant accounting policies from the notes to the financial statements in their discussion of critical accounting estimates in MD&A and provide limited additional discussion of the critical accounting estimates. We are seeking public input on how to revise our requirements to improve the discussion of critical accounting estimates in MD&A.

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[445] *See* ABA 1.

[446] *See id. See also* ABA 2. The Commission has also stated that critical accounting estimates should supplement and not duplicate the description of accounting policies in the notes to the financial statements. *See, e.g.,* 2003 MD&A Interpretive Release.

[447] *See* ABA 1.

[448] *See* CFA Institute.

[449] *See* A. Radin.

[450] *See* SCSGP.

[451] *See* Cautionary Advice Release. The Commission alerted registrants to the need for greater investor awareness of the sensitivity of financial statements to the methods, assumptions and estimates underlying their preparation and stated that the objective of this disclosure is consistent with the objective of MD&A.

[452] *See id.*

[453] *See* Disclosure in Management's Discussion and Analysis about the Application of Critical Accounting Policies, Release No. 33–8098 (May 10, 2002) [67 FR 35620 (May 20, 2002)] ("Critical Accounting Proposing Release"). The Commission also proposed rules requiring a registrant that has initially adopted an accounting policy with a material impact on its financial presentation to disclose information that includes: what gave rise to the initial adoption; the impact of the adoption; the accounting principle adopted and method of applying it; and the choices it had among accounting principles. *See id.*

[454] *See id.*

[455] Disclosure would have been required, if applicable, regarding why the accounting estimate was reasonably likely to change in future periods with a material impact on the registrant's financial presentation. In certain situations, disclosures would have been required for individual segments of the registrant's business.

[456] More specifically, the rules would have required, for each critical accounting estimate, discussion of changes that would result either from (i) making reasonably possible, near-term changes in the most material assumptions underlying the estimate, or (ii) using in place of the recorded estimate the ends of the range of reasonably possible amounts that the registrant likely determined when formulating its recorded estimate.

[457] *See* Critical Accounting Proposing Release.

[458] This interpretive guidance was provided based on the Division staff's review of registrant disclosures, including its Fortune 500 review. The Commission concluded that additional guidance would be especially useful in a few areas of MD&A, including disclosure of critical accounting estimates. *See* 2003 MD&A Interpretive Release.

[459] *See id.*

[460] *See id.* The Commission further stated that "[e]qually important, companies should address the questions that arise once the critical accounting estimate or assumption has been identified, by analyzing, to the extent material, such factors as how they arrived at the estimate, how accurate the estimate/assumption has been in the past, how much the estimate/assumption has changed in the past, and whether the estimate/assumption is reasonably likely to change in the future." *See id.* at 75065.

The FASB has also stated that distinguishing between a change in an accounting principle and a change in an accounting estimate is sometimes difficult, and in some cases, a change in accounting estimate is effected by a change in accounting principle. *See* ASC Topic 250–10–45–18.

[461] *See* 2003 MD&A Interpretive Release.

c. Request for Comment

137. Should we revise Item 303 to require disclosure about critical accounting estimates? If so, what information would be important to investors?

138. Should we define "critical accounting estimates"? If so, should the definition be based on our 2001 guidance,[462] the definition proposed in 2002,[463] or something else? Why? Are there any other elements to a "critical accounting estimate" that have not been captured in prior definitions?

139. Why do registrants repeat the discussion of accounting policies presented in the notes to the financial statements? How can we encourage registrants to eliminate repetition in MD&A of the discussion of accounting policies provided in the notes to the financial statements?

140. Do registrants find the guidance for disclosing critical accounting estimates from the 2003 MD&A Interpretive Release helpful in determining whether such disclosure is required? Would it be helpful for registrants if we incorporated this or other elements of our guidance on critical accounting estimates into Regulation S–K?

141. Should we revise our requirements to elicit more comparable disclosure among registrants? If so, how? Should we adopt prescriptive requirements relating to critical accounting estimates? Are there any accounting estimates common to a particular industry that are "critical" to all participants in that industry?

142. Should we require the disclosure of management's judgments and estimates that form the basis for MD&A disclosure? For example, should we require registrants to disclose the quantitative and qualitative factors that form its assessment of materiality? Should we require registrants to disclose how they assessed materiality?

143. Should we require management to disclose the nature of its assessment of errors that it determined to be immaterial and therefore were not corrected?

144. Should we require disclosure of other critical accounting estimates, such as those that impact other metrics or measures, such as the number of new customers or the number of subscribers?

C. Risk and Risk Management

Disclosure of a registrant's most significant risks provides investors with important context for assessing the registrant's financial potential. Risk-related disclosure is required by multiple items of Regulation S–K and certain financial reporting requirements.[464] In this section, we focus on:

- Item 503(c), which requires disclosure of the most significant factors that make an investment in a registrant's securities speculative or risky;[465] and
- Item 305, which requires quantitative and qualitative disclosure about market risk.[466]

Also in this section, we explore different approaches to risk-related disclosure. Specifically, we consider whether requiring additional disclosure of management's approach to risk and risk management and consolidating risk-related disclosure would, on balance, be beneficial to investors and registrants. We also seek to better understand how our disclosure requirements could be updated to enhance investors' ability to evaluate a registrant's risk exposures. We are especially interested in feedback on how we can improve the content and readability of the risk factors included in a filing as well as the potential advantages and disadvantages of different approaches to risk-related disclosure.

1. Risk Factors (Item 503(c))

Item 503(c) requires disclosure of the most significant factors that make an investment in a registrant's securities speculative or risky and specifies that the discussion should be concise and organized logically.[467] Although the requirement is principles-based, it includes the following specific examples as factors that may make an offering speculative or risky:

- A registrant's lack of an operating history,
- a registrant's lack of profitable operations in recent periods,
- a registrant's financial position,
- a registrant's business or proposed business, or
- the lack of a market for a registrant's common equity securities or securities convertible or exercisable for common equity securities.[468]

Additionally, Item 503(c) directs registrants to explain how each risk affects the registrant and discourages disclosure of risks that could apply to any registrant.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. We received several comment letters with recommendations on risk factor disclosure.[469] One commenter suggested a comprehensive default framework for risk factor disclosure that would classify risk factors based upon relative likelihood and relative impact.[470] This proposed framework would require registrants to classify both relative likelihood and relative impact into one of three tiers based on the risk's probable occurrence and the relative seriousness of the consequences if a risk materializes.

One commenter stated that risk factors should be more entity-specific and connected to financial results.[471] Another commenter noted that registrants disclose risk factors that "go well beyond those that make an investment 'speculative'" and stated that any new risk factor disclosure requirements should be principles-based. This commenter suggested revising Item 503(c) to include examples of generic disclosure that need not be included as risk factors.[472] One commenter generally recommended reducing lengthy, unnecessary risk factor disclosure.[473] Another commenter urged that any such requirement be grounded in the principle of materiality, suggesting that we consider whether a reformulated risk discussion should highlight the risks that management views as most significant.[474]

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[462] *See* Cautionary Advice Release.

[463] *See* Critical Accounting Proposing Release.

[464] Although we focus on Items 503(c) and 305 of Regulation S–K, risk-related disclosure may be provided in response to other requirements, such as Items 101(d)(3) (risk attendant to foreign operations), 103 (legal proceedings), or 303 (MD&A). For financial reporting requirements, risk-related disclosure may be included in the financial statements in response to ASC Topics 275 (risks and uncertainties), 450 (contingencies), or 825 (financial instruments), among others. The staff is separately considering Items 101(d)(3) and 103 in developing recommendations for the Commission for potential changes to update or simplify certain disclosure requirements. For a description of this project, *see* Section I. For a discussion of Item 303, *see* Section IV.B.3 to IV.B.7.

[465] Item 503(c) of Regulation S–K [17 CFR 229.503(c)].

[466] Item 305 of Regulation S–K [17 CFR 229.305].

[467] Item 503(c) of Regulation S–K [17 CFR 229.503(c)].

[468] *Id.*

[469] *See, e.g.*, letter from Tom C.W. Lin and attached law review article, (July 30, 2014) ("Lin"); CFA Institute; Shearman; A. Radin; CCMC; letters from Reps. Langevin and Himes (June 17, 2015) ("Reps. Langevin and Himes"); Reps. Grijalva, Waters and Lowenthal (July 24, 2015) ("Reps. Grijalva, Waters and Lowenthal"); Sens. Cardin, et al. (Aug. 18, 2015) ("Sens. Cardin, et al.").

[470] *See* Lin.

[471] *See* CFA Institute (stating that the ability to price risk is important to disclosure effectiveness).

[472] *See* Shearman. The commenter suggested the following factors could be included in a revised Item 503(c) as examples of generic risks that do not need to be disclosed as risk factors: macro-economic risks that effect all businesses in a particular industry; general stock market risks, such as volatility in a company's stock price; summaries of regulation; and risk disclosure that repeats disclosure provided in response to other specific requirements or financial disclosures, such as risks related to key management, legal proceedings and the payment of dividends.

[473] *See* A. Radin (noting the "excessive volume" of disclosures required by Regulations S–K and S–X).

Several comment letters stated there should be additional risk-related disclosure on specific topics.[475] One set of commenters encouraged us to require additional disclosure about cybersecurity and related risks.[476] Another group of commenters focused on additional disclosure of risks associated with oil and gas exploration, including drilling in the Arctic Ocean.[477]

We received two comment letters on the impact of the Private Securities Litigation Reform Act ("PSLRA") on risk-related disclosure. One commenter acknowledged that liability concerns may contribute to the length of Exchange Act documents but expressed concern about any effort to require issuers to reduce the length or number of risk factors included in a filing.[478] Another commenter attributed the growing length of risk factor disclosure to liability concerns and noted that any efforts to reduce risk factor disclosure, without concomitant changes to the relevant rules or the protection of a safe harbor, are unlikely to be effective because there is little incentive for registrants to scale-back risk factor disclosure.[479]

b. Discussion

The five factors specified in Item 503(c) as factors that may make an offering speculative or risky have not changed since the Commission published its initial guidance on risk factor disclosure in 1964. These factors were derived from previous stop order proceedings under Section 8(d) of the Securities Act where the Commission suspended the effectiveness of previously filed registration statements due, in part, to inadequate disclosure about speculative aspects of the registrant's business.[480]

Since the Commission first published guidance on risk factor disclosure in 1964,[481] it has been reiterated that this disclosure should be:

- Focused on the "most significant" or "principal" factors that make a registrant's securities speculative or risky,[482]
- placed in the forefront of the filing,[483] and
- organized and concise.[484]

Commission and Division guidance also has emphasized that registrants should avoid "boiler plate" risk factors, and that a discussion of risk in purely generic terms does not indicate how a risk may affect an investment in a particular registrant.[485] When adding risk factor requirements to annual and quarterly reports and Exchange Act registration statements on Form 10, the Commission discouraged the unnecessary restatement of risk factors in quarterly reports, emphasizing that quarterly reports need only disclose material changes from risk factors previously disclosed in other Exchange Act reports.[486]

The length and number of risk factors disclosed by registrants varies. Although Item 503(c) directs registrants to provide a concise risk factors discussion, one study found that registrants include an average of 22 different risk factors in disclosure spanning an average of 8 pages.[487] Another study found that registrants increased the length of risk factor disclosures from 2006 to 2013 by more than eighty-five percent in terms of word count relative to the total word count of Form 10–K filings, and that this increase in quantity may not be associated with better disclosure.[488] A third study found that the average number of risk factors disclosed in certain sectors of the energy industry ranged between twelve and fifty-one.[489] For quarterly reports, it is not unusual for registrants to repeat the entire risk factor discussion from their previously filed annual reports,[490] even though registrants are required to disclose only material changes from previously disclosed risks.[491]

Although Item 503(c) instructs registrants not to present risks that could apply to any registrant, risk factor disclosure typically includes generic risk factors. Registrants often use risk factors that are similar to those used by others in their industry or circumstances as the starting point for risk disclosure, and the disclosure is not always tailored to each registrant's particular risk profile. Examples of generic disclosures include risk factors about a registrant's failure to compete successfully, the effect of general economic conditions on a registrant's business, changes in regulation, and dependence upon a registrant's management team. Despite the inclusion of generic risks, however, academic studies find that risk factor disclosure is informative and that the public availability of this information decreases information asymmetry among investors.[492]

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[474] *See* CCMC.

[475] *See, e.g.*, Reps. Langevin and Himes; Reps. Grijalva, Waters and Lowenthal; Sens. Cardin, et al.

[476] *See, e.g.*, Reps. Langevin and Himes.

[477] *See, e.g.*, Reps. Grijalva, Waters and Lowenthal; Sens. Cardin, et al.

[478] *See* SCSGP (referencing the Commission's proposal to limit the number of risk factors included in a filing in connection with the Commission's Plain English initiative and comments received in connection with that initiative, one of which states "no issuer should ever be put in the position of choosing significant material risks in order to satisfy a numerical limitation.").

[479] *See* Shearman (stating that the PSLRA's safe harbor, which requires issuers that disclose forward-looking information to also disclose cautionary information, contributes to lengthy risk factors disclosures).

[480] *See* Guides for Preparation and Filing of Registration Statements, Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617 (Dec. 17, 1968)] ("1968 Guides") (citing In the Matter of Doman Helicopters, Inc., 41 SE.C. 431 (Mar. 27, 1963); In the Matter of Universal Camera Corporation, 19 SE.C. 648 (June 28, 1945)).

[481] *See* Guides for Preparation and Filing of Registration Statements, Release No. 33–4666 (Feb. 7, 1964) [29 FR 2490 (Feb. 15, 1964)] ("1964 Guides").

[482] "Principal" was the term used in the 1982 Integrated Disclosure Adopting Release and "most significant" was the term used in the Plain English Disclosure Adopting Release.

[483] *See* 1964 Guides; 1968 Guides; and 1982 Integrated Disclosure Adopting Release.

[484] *See* 1964 Guides; 1968 Guides; 1982 Integrated Disclosure Adopting Release; and Securities Offering Reform Release.

[485] *See* Plain English Disclosure Adopting Release. *See also* Updated Staff Legal Bulletin No. 7: Plain English Disclosure (June 7, 1999), *available at https://www.sec.gov/interps/legal/cfslb7a.htm* ("Updated Staff Legal Bulletin No. 7").

[486] *See* Securities Offering Reform Release. In adopting new item requirements in Forms 10–K, 10–KSB, and 10 to require risk factor disclosure, the Commission noted that, though not previously required, many registrants had included for several years risk factor disclosure in their Exchange Act reports, perhaps to take advantage of the safe harbor in Securities Act Section 27A and the judicially-created "bespeaks caution" defense.

[487] *See* Investor Responsibility Research Center Institute, *The Corporate Risk Factor Disclosure Landscape*, Jan. 2016, *available at http://irrcinstitute.org/wp-content/uploads/2016/01/FINAL-EY-Risk-Disclosure-Study.pdf*.

[488] *See* Anne Beatty et al., *Sometimes Less is More: Evidence from Financial Constraints Risk Factor Disclosures*, Mar. 2015, *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186589* ("Beatty et al."). To examine the "informativeness" of risk factor disclosures, the authors of this study analyzed risk factor disclosures about financial constraints and argue that as litigation risk increased during and after the financial crisis, registrants were more likely to disclose immaterial information, resulting in a deterioration of disclosure quality.

[489] *See* PricewaterhouseCoopers LLP, *Stay Informed, 2012 Financial Reporting Survey: Energy industry current trends in SEC reporting*, Feb. 2013, *available at http://www.pwc.com/en_GX/gx/oil-gas-energy/publications/pdfs/pwc-sec-financial-reporting-energy.pdf*. This report reviewed financial reporting trends of 87 registrants with market capitalizations of at least $1 billion that apply U.S. GAAP in the following subsectors of the energy industry: downstream, drillers, independent oil and gas, major integrated oil and gas, midstream and oil field equipment and services. Based on this study, the average number of risk factors in the major integrated oil and gas sector was 12 while the average number of risk factors in the midstream sector was 51. In one sector, the maximum number of risk factors was 95.

[490] *See* PricewaterhouseCoopers LLP, *Stay Informed: 2014 technology financial reporting trends*, Aug. 2014, *available at http://www.pwc.com/en_US/us/technology/publications/assets/pwc-2014-technology-financial-reporting-trends.pdf*. This report reviewed the annual and periodic filings of 135 registrants in the software and Internet, computers and networking, and semiconductors sectors. Based on this study, over half of the registrants surveyed repeated all of their risk factors in their quarterly filings.

[491] *See* Item 1A of Part II of Form 10–Q.

c. Request for Comment

145. How could we improve risk factor disclosure? For example, should we revise our rules to require that each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk?

146. Should we require registrants to discuss the probability of occurrence and the effect on performance for each risk factor? If so, how could we modify our disclosure requirements to best provide this information to investors? For example, should we require registrants to describe their assessment of risks?

147. How could we modify our rules to require or encourage registrants to describe risks with greater specificity and context? For example, should we require registrants to disclose the specific facts and circumstances that make a given risk material to the registrant? How should we balance investors' need for detailed disclosure with the requirement to provide risk factor disclosure that is "clear and concise"? Should we revise our rules to require registrants to present their risk factors in order of management's perception of the magnitude of the risk or by order of importance to management? Are there other ways we could improve the organization of registrants' risk factors disclosure? How would this help investors navigate the disclosure?

148. What, if anything, detracts from an investor's ability to gain important information from a registrant's risk factor disclosure? Do lengthy risk factor disclosures hinder an investor's ability to understand the most significant risks?

149. How could we revise our rules to discourage registrants from providing risk factor disclosure that is not specific to the registrant but instead describes risks that are common to an industry or to registrants in general? Alternatively, are generic risk factors important to investors?

150. Should we specify generic risks that registrants are not required to disclose, and if so, how should we identify those risks? Are there other ways that we could help registrants focus their disclosure on material risks?

151. Should we retain or eliminate the examples provided in Item 503(c)? Should we revise our requirements to include additional or different examples? Would deleting these examples encourage registrants to focus on their own risk identification process?

152. Should we require registrants to identify and disclose in order their ten most significant risk factors without limiting the total number of risk factors disclosed?[493] If so, should other risk factors be included in a separate section of the filing or in an exhibit to distinguish them from the most significant risks? Alternatively, should we require registrants to provide a risk factors summary in addition to the complete disclosure? Would a summary help investors better understand a registrant's risks by highlighting certain information? Are there challenges associated with requiring a summary of the most significant risks?

153. Are there ways, in addition to those we have used in Item 503, our Plain English Rules and guidance on MD&A, to ensure that registrants include meaningful, rather than boilerplate, risk factor disclosure?

154. Risk profiles of registrants are constantly changing and evolving. For example, registrants today face risks, such as those associated with cybersecurity, climate change, and arctic drilling,[494] that may not have existed when the 1964 Guides and 1968 Guides were published. Is Item 503(c) effective for capturing emerging risks? If not, how should we revise Item 503(c) to make it more effective in this regard?

155. What types of investors or audiences are most likely to value the Item 503(c) disclosures?

156. What is the cost of providing the disclosure required by Item 503(c), including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 503(c).

2. Quantitative and Qualitative Disclosures About Market Risk (Item 305)

Item 305 requires quantitative and qualitative disclosure of market risk sensitive instruments that affect a registrant's financial condition.[495] Item 305(a) requires registrants to provide quantitative disclosure about market risk sensitive instruments using one or more of three disclosure alternatives:

(1) Tabular presentation of fair value information and contract terms relevant to determining future cash flows, categorized by expected maturity dates;

(2) Sensitivity analysis expressing the potential loss in future earnings, fair values, or cash flows from selected hypothetical changes in market rates and prices; or

(3) Value at risk ("VaR") disclosures expressing the potential loss in future earnings, fair values, or cash flows from market movements over a selected period of time and with a selected likelihood of occurrence.[496]

Registrants are required to categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading.[497] To the extent material, within both the trading and other than trading portfolios, registrants must provide separate quantitative information for each market risk exposure category (*e.g.*, interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk).[498]

Item 305(b) requires qualitative information about market risk. Registrants must describe, to the extent material, their primary market risk exposures, how those exposures are managed, and any changes to either the primary market risk exposures or the way that risk exposures are managed.[499]

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[492] *See, e.g.*, John Campbell et al., *The Information Content of Mandatory Risk Factor Disclosures in Corporate Filings*, 19 Rev. Acct. Stud. 396, 396–455 (Sept. 2010); Beatty et al.

[493] The Commission has previously considered proposals to either limit the number of risk factors included in a filing or require registrants to list risk factors in the order of priority to the registrant. The Commission did not adopt either of these requirements in response to comments received from investors. *See* Plain English Disclosure Adopting Release at 6370 ("In response to comments, the new rules will not require issuers to limit the length of the summary, limit the number of risk factors, or prioritize risk factors.").

[494] For a discussion of some emerging risks that registrants may face, *see* Section 0.

[495] Item 305 of Regulation S–K [17 CFR 229.305]. For the purposes of Item 305(a) and (b), market risk sensitive instruments include derivative financial instruments, other financial instruments, and derivative commodity instruments. Each of these terms is defined in General Instruction 3 to Items 305(a) and (b). *See* Disclosure of Market Risk Sensitive Instruments Release.

[496] Item 305(a) of Regulation S–K [17 CFR 229.305(a)].

[497] *Id.*

[498] *Id.* In their materiality assessment, registrants are required to evaluate both the materiality of the fair values of derivative financial instruments, other financial instruments, and derivative commodity instruments as of the end of the latest fiscal year and the materiality of potential, near-term losses in future earnings, fair values, and/or cash flows from reasonably possible near-term changes in market rates or prices. *See* General Instruction 5 to Items 305(a) and (b) of Regulation S–K [17 CFR 229.305(a) and (b)].

[499] Item 305(b) of Regulation S–K [17 CFR 229.305(b)].

One of Item 305's primary objectives is to provide investors with forward looking information about a registrant's potential market risk exposure.[500] To specifically cover the forward-looking aspects of disclosure provided in response to Item 305, the Commission adopted a safe harbor as part of the rule.[501]

a. Comments Received

S–K Study. A few commenters suggested that EGCs should be exempt from Item 305 disclosure.[502] Another commenter expressed concern that the FASB's 2012 Exposure Draft on liquidity risk and interest rate risk disclosures could have created redundancies with some of the disclosures currently required in Items 305 and 303.[503]

Disclosure Effectiveness Initiative. Several commenters noted that, while financial reporting in accordance with evolving accounting standards has greatly expanded since the adoption of Item 305, including the adoption of ASC Topic 815, Item 305 and other disclosure requirements in Regulation S–K have not been revisited to identify and eliminate redundancies.[504] One of these commenters suggested eliminating Item 305 in light of current U.S. GAAP requirements, or, alternatively, refocusing Item 305 to permit principles-based disclosure of market risk.[505] Another commenter stated that improving market risk disclosures should be a high priority and that there should be a better linkage among the financial statements and other risk-related disclosure.[506] One commenter asserted that there is confusion in the marketplace about what specific disclosure is required under Item 305.[507] Another commenter stated that updating Item 305 should be a "central aspect" of disclosure effectiveness efforts and included specific suggestions for revisions, including improving VaR.[508] Though not commenting on Item 305 specifically, one commenter stated its belief that standardized disclosure of common exposures to derivatives is warranted.[509]

b. Discussion

i. Disclosure Objective

The adequacy of market risk disclosure emerged as an important financial reporting issue in the 1990s following a substantial increase in the use of derivatives and other instruments subject to market risk and the significant, sometimes unexpected, losses registrants experienced from their use of these instruments.[510] The Commission adopted Item 305 in 1997 to improve disclosures about market risk and help investors better understand and evaluate a registrant's market risk exposures.[511] The required disclosures were also intended, where applicable, to provide a mechanism for registrants to disclose that their use of derivatives represents risk management rather than speculation.[512]

To achieve these goals, the Commission used the following guiding principles in adopting Item 305:

- Disclosures should make transparent the impact of derivatives on a registrant's statements of financial position, cash flows, and results of operations;
- Disclosures should provide information about a registrant's exposures to market risk;
- Disclosures should explain how market risk sensitive instruments are used in the context of the registrant's business;
- Disclosures about market risk exposures should not focus on derivatives in isolation, but rather should reflect the risk of loss inherent in all market risk sensitive instruments;
- Market risk disclosure requirements should be flexible enough to accommodate different types of registrants, different degrees of market risk exposure, and alternative ways of measuring market risk;
- Disclosures about market risk should address, where appropriate, special risks relating to leverage, option, or prepayment features; and
- New disclosure requirements should build on existing requirements, where possible, to minimize compliance costs.[513]

Item 305 was designed to address concerns that market risks associated with derivatives and other market-sensitive instruments were not adequately disclosed.[514] In the adopting

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[500] *See* Disclosure of Market Risk Sensitive Instruments Release.

[501] Item 305(d) of Regulation S–K [17 CFR 229.305(d)].

[502] *See, e.g.,* Silicon Valley and M. Liles.

[503] *See* Ernst & Young 1 (referring to Proposed Accounting Standards Update on FASB's Web site, *Financial Instruments (Topic 825): Disclosures about Liquidity Risk and Interest Rate Risk*). The 2012 Exposure Draft is no longer on the FASB's active agenda. *See FASB Technical Agenda* (last visited Mar. 2, 2016), *available at http://www.fasb.org/jsp/FASB/Page/TechnicalAgendaPage&cid=1175805470156#tab_1175805486413.*

The 2012 Exposure Draft aimed to provide more useful information on exposures to liquidity risk and to interest rate risk by requiring, among other things, tabular disclosure of liquidity risk related to financial assets and financial liabilities or cash flow obligations, disaggregated by expected maturities; carrying amounts of classes of financial assets and financial liabilities, segregated according to time intervals based on contractual repricing; an interest rate sensitivity table showing the effects on net income and shareholder equity of specific hypothetical shifts of interest rates; and quantitative or narrative disclosure as necessary to understand exposures to liquidity risk and interest rate risk. For a discussion of the 2012 Exposure Draft, *see* Section IV.C.2.b.iii.

[504] *See, e.g.,* CCMC (noting that ASC Topic 815 provides substantial guidance about hedge accounting and also stating there is some redundancy between Item 305 and Item 303, evidenced by the fact that some public companies do not provide stand-alone disclosure in response to Item 305); SCSGP (noting overlap between certain market risk disclosures required by S–K Item 305, ASC 820 Fair Value Measurements, and ASC 815 Derivatives and Hedging); ABA 2.

[505] *See* ABA 2 (citing ASC 820 Fair Value Measurements and ASC 815 Derivatives and Hedging and suggesting that any such principles-based disclosure of market risk could be included in MD&A). The degree of overlap between Item 305 and U.S. GAAP depends on which of Item 305's presentations is chosen and on whether information that is encouraged to be provided by ASC 820, including qualitative disclosure on risk management, is actually provided. Using a tabular presentation under Item 305 generally results in greater overlap with ASC 820 and ASC 815. Item 305 also requires that disclosure be made outside the financial statement footnotes.

[506] *See* CFA Institute. This commenter did not provide a suggestion as to how to better link financial statement disclosures with risk-related disclosure provided elsewhere in a filing.

[507] *See* CCMC. This commenter stated Item 305 is "one of the most complicated disclosure requirements to parse in all of Regulation S–K."

[508] *See* Hu. In research cited in the comment letter, this commenter perceived three problems with Item 305's VaR presentation: (i) Too much "latitude as to (a) the models, assumptions, and parameters used, as well as (b) the confidence level and time horizon [registrants can] choose to report at;" (ii) no evidence as to the quality of the VaR model is required; and (iii) VaR "is not intended to gauge possible losses in times of high economic stress." *See* Henry T. C. Hu, *Disclosure Universes and Modes of Information: Banks, Innovation, and Divergent Regulatory Quests,* 31 Yale J. on Reg. 565, 598 (2014) ("Hu 2014").

[509] *See* AFL–CIO. As an example of common exposures, this commenter cited credit triggers under swaps contracts where "banks may require companies to fully collateralize credit exposures under certain conditions."

[510] *See* Disclosure of Market Risk Sensitive Instruments Release.

[511] *See id.* In conjunction with adopting Item 305, the Commission amended Rule 4–08 of Regulation S–X and Item 310 of Regulation S–B, which is no longer in effect, to require enhanced descriptions of accounting policies for derivatives in the footnotes to the financial statements. These revisions were designed to address footnote disclosures of accounting policies that were often too general to convey adequately the diversity in accounting that exists for derivatives. In contrast to Item 305, which applies to all financial instruments, the new disclosure requirements under Rule 4–08 and Item 310 applied only to derivatives; disclosure requirements for other financial instruments were addressed by existing U.S. GAAP and Commission guidance. *Id.* (citing Accounting Principles Board Opinion No. 22 (April 1972)). SRCs are not required to provide Item 305 information. Item 305(e) of Regulation S–K [17 CFR 229.305(e)].

[512] *See* Disclosure of Market Risk Sensitive Instruments Release.

[513] *See id.*

[514] *See id.* The disclosure issues were noted as part of the staff's review of more than 500 annual

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release for Item 305, the Commission noted that disclosure about reported items in the footnotes to the financial statements, MD&A, schedules and selected financial data may not have adequately reflected the effect of derivatives on such reported items.[515] In addition, disclosures about different types of market risk sensitive instruments were often reported separately, making it difficult to assess a registrant's aggregate market risk exposures.[516] Accordingly, Item 305 was intended to help investors understand a registrant's risk management activities and to help place those activities in the context of the registrant's business by requiring enhanced disclosure about specific market risk sensitive instruments.[517]

Division staff has observed that the instructions to Item 305 may inadvertently discourage some disclosure. For example, a sensitivity analysis requires disclosure of the potential loss to the future earnings, fair values, or cash flows of market risk sensitive instruments from a hypothetical change in rates or prices.[518] The instructions to Item 305(a) state that registrants should select hypothetical changes in market rates or prices that are expected to reflect reasonably possible near-term changes in those rates and prices; however, absent economic justification for the selection of a different amount, "registrants should use changes that are not less than ten percent of end of period market rates or prices." [519] Many registrants apply the ten percent threshold even when market conditions, such as persistently low interest rates or volatile exchange rates, may suggest that a different threshold, or even multiple thresholds, would be more appropriate.[520]

Considering commenters' differing views on the efficacy of Item 305 and the complexity of Item 305's required disclosures, we seek input on whether, and how, changes to Item 305 would be beneficial to both investors and registrants.

(a) Request for Comment

157. Is Item 305 effective in eliciting disclosure about market risks and risk management practices that investors consider important? If not, how could Item 305 be improved?

158. Does Item 305 result in information that allows investors to effectively assess (1) a registrant's aggregate market risk exposure, and (2) the impact of market risk sensitive instruments on a registrant's results of operations and financial condition? If not, how could we revise Item 305 to achieve these goals?

159. Do the disclosure alternatives in Item 305(a) elicit adequate quantitative disclosure about market risk? Do the rules or the instructions discourage registrants from fully evaluating and disclosing their market risk exposures, such as in a sensitivity analysis? Should the rules be more prescriptive? If so, in what ways should we revise the rules and instructions to Item 305(a)?

160. Should additional or different principles guide the market risk disclosure requirements? Should we expand our definition of "market risk sensitive instruments" to require registrants to provide additional disclosure about other risks, including credit risk, liquidity and funding risk and operational risk?

161. Should we limit the quantitative disclosure requirement to certain registrants such as financial institutions or registrants engaged in financial services? Why or why not?

162. What types of investors or audiences are most likely to value the information required by Item 305?

163. What is the cost of providing the disclosure required by Item 305, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 305.

ii. Disclosure Alternatives and Coordination With Financial Statement Disclosures

Item 305(a) specifies three disclosure alternatives for registrants to present quantitative information about market risk: Tabular disclosure, sensitivity analysis, and VaR.[521] In adopting Item 305, the Commission recognized the evolving nature of market risk sensitive instruments, market risk measurement systems, and market risk management strategies.[522] The Commission stated that it expected to "continue considering how best to meet the information needs of investors." [523] Accordingly, we are seeking input on whether and how we should revise Item 305 to reflect changes in market risk exposures and methods for measuring market risk.

In response to the proposing release for Item 305, some commenters suggested greater flexibility and recommended a "management approach" to disclosure. As suggested by the commenters, this disclosure would focus on the information and methods that management actually uses internally to evaluate, monitor, and manage market risk.[524] The Commission did not adopt this approach, believing that a presentation of market risk using a management approach outside of the framework articulated in Item 305 could make it difficult for investors to assess market risk across registrants.[525] We are interested in whether a "management approach" to disclosure is preferable to the alternatives specified in the current rule.

We are also interested in whether we should modify Item 305 given accounting developments since the item's adoption. When the Commission adopted Item 305 in 1997, minimal authoritative literature on the accounting for options and complex derivatives existed.[526] Since that time, accounting requirements have evolved to provide for greater disclosure of market risk sensitive instruments.[527] As a result, there may be redundancies

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reports in 1994 and 1995 to evaluate the adequacy of market risk disclosure and assess the effect of new FAS 119 on market risk disclosure. *See id.*

[515] *See id.*

[516] *See id.*

[517] *See id.*

[518] Item 305(a)(1)(ii) of Regulation S–K [17 CFR 229.305(a)(1)(ii)].

[519] Instruction 3A to paragraph 305(a).

[520] For example, the prime rate in the U.S. has been 3.5% or 3.25% for a number of months. *See http://online.wsj.com/mdc/public/page/2_3020-moneyrate.html?mod=mdc_bnd_pglnk.* Many registrants present their interest rate risk under the sensitivity analysis showing only a shift of 10% of this amount, or 35 or 33 (rounded) basis points. Financial services and financial institution registrants, on the other hand, often provide analyses of various shifts in interest rates and evaluate shifts of 50, 100, and 200 basis points, both up and down. This more comprehensive presentation may provide investors with a better understanding of how various shifts in market risk, both more moderate and more pronounced, might impact the registrant.

[521] Item 305(a)(1) of Regulation S–K [17 CFR 229.305(a)(1)].

[522] *See* Disclosure of Market Risk Sensitive Instruments Release.

[523] *See id.* at 6046.

[524] *See id.* at 6055. Commenters believed that "the approaches in the proposing release (i) do not appear to allow gap and duration analyses, which are currently used by some to measure market risk, and (ii) may become outdated as new measurement approaches are developed in the market place." *Id.* at 6055.

[525] *See id.* The Commission noted that, in adopting Item 305, it sought to strike a balance between those seeking a "management approach" and those supporting a more consistent reporting framework for the sake of comparability. *See id.*

[526] *See* Disclosure of Market Risk Sensitive Instruments Release.

[527] FASB Accounting Standards Update No. 2011–04, May 2011, Fair Value Measurement (Topic 820). ASC 820 requires the disclosure of fair value of all financial instruments, including derivatives and non-derivative financial instruments, but does not require any expected maturity information.

between the disclosure provided in response to Item 305 and U.S. GAAP. Commission staff has observed that, the degree of repetition in the disclosure depends on which Item 305 disclosure alternative a registrant utilizes and whether a registrant provides information that is encouraged by U.S. GAAP in addition to the disclosure that is required.[528]

Item 305 disclosure also tends to vary among registrants. Many registrants provide a sensitivity analysis to present market risk information, while others rely on tabular presentation or VaR. For large financial institutions, it is not unusual to use some combination of the three to capture different market risk sensitive instruments.

(a) Request for Comment

164. How have standard risk management practices and methods of reporting market risk evolved since the adoption of Item 305 in 1997? Should we revise Item 305 to reflect those changes and if so, how? Should we provide for new disclosure alternatives in addition to, or in lieu of, existing alternatives?

165. What revisions should we consider to better link disclosure that identifies, quantifies, and analyzes a registrant's material market risks to its: (a) Market risk sensitive instruments, (b) financial statements, (c) capital adequacy, and (d) any other metrics important to an understanding of market risk exposures?

166. Should we eliminate the prescribed disclosure alternatives and allow registrants to discuss market risk according to the methods used by management to manage the risk? Would allowing a "management approach" provide investors with more insight about the way management actually assesses market risks, or would this approach unduly hinder investors' ability to compare market risk disclosures across registrants?

167. Is the disclosure required by Item 305 repetitive of the disclosure required by U.S. GAAP and Rule 4–08 of Regulation S–X? Conversely, does Item 305 result in disclosure that is important to investors and is not found elsewhere in a registrant's filing? Even considering any repetition, do investors benefit from disclosure about market risk exposure outside of the audited financial statements?

iii. Comparability of Disclosure

In adopting Item 305, the Commission acknowledged the tension between approaches to market risk disclosure that favor comparability and approaches that favor flexibility.[529] The approach taken in the final rules sought to strike a balance between different commenters' perspectives.[530]

The Commission designed Item 305 to be flexible by prescribing three disclosure alternatives without stipulating standardized methods and procedures specifying how to comply with each alternative.[531] Registrants may choose which methods, model characteristics, assumptions, and parameters they use in complying with the item, and registrants may use more than one disclosure alternative across each market risk exposure category.[532]

To address comparability, the Commission included a requirement that registrants describe the characteristics of the model and the assumptions used to prepare the quantitative market risk disclosures. By requiring a description of the model and its assumptions, the Commission intended to assist investors in evaluating the potential effect of variations in the model's characteristics and assumptions.[533]

In 2012, the FASB examined the question of comparability and considered standardizing liquidity and interest rate risk disclosure as part of a project that is currently in Exposure Draft form.[534] The Exposure Draft would have required all reporting entities to provide standardized quantitative disclosure about liquidity risk, but only financial institutions would have been required to provide additional, standardized quantitative disclosure about interest rate risk.

Although initiated, in part, as a response to comments received from financial statement users to an earlier FASB release on financial statements, the majority of respondents to the Exposure Draft, eighty-four percent of whom were preparers, did not support the proposed disclosures.[535] Most respondents stated that standardizing information about liquidity and interest rate risk is not appropriate and not achieved by the proposals.[536] Some commenters questioned whether standardization is an appropriate objective and if it could ever be achieved.[537]

(a) Request for Comment

168. Should we revise Item 305 to provide for more standardized disclosure that would enhance comparability among registrants? How should we balance standardization with different methods and assumptions that registrants may use to evaluate, monitor, and manage market risk? How would standardization affect investors and registrants?

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[528] For example, ASC 815 encourages but does not require that disclosure about a registrant's objectives and strategies for using derivatives be described in the context of the entity's overall risk exposures. The standard indicates that if these additional qualitative disclosures are made, they should include a discussion of those risk exposures even though the registrant does not manage some of those risk exposures using derivatives.

[529] *See* Disclosure of Market Risk Sensitive Instruments Release at 6048 ("The Commission has provided flexibility in the quantitative and qualitative disclosure requirements . . . even though such flexibility is likely to reduce the comparability of disclosures.").

[530] *See id.*

[531] *See id.* For example, the terms used to describe two of the three disclosure alternatives—"sensitivity analysis" and "value at risk"—describe a general class of models. They are not meant to refer to any one model for quantifying market risk. In addition, Item 305 permits registrants to change disclosure alternatives or key model characteristics, assumptions, and parameters used in providing quantitative information about market risk, with disclosure if the effects of such a change are material. The Commission also noted that two methods of measuring market risk then in use, gap analysis and duration analysis, would, with minor revisions, satisfy the tabular and sensitivity analysis disclosure requirements respectively. *Id.*

[532] *See id.;* Item 305(a)(1)(i)(B) of Regulation S–K [17 CFR 229.305(a)(1)(i)(B)]; Item 305(a)(1)(ii)(B) of Regulation S–K [17 CFR 229.305(a)(1)(ii)(B)]; Item 305(a)(1)(iii)(B) of Regulation S–K [17 CFR 229.305(a)(1)(iii)(B)].

[533] *See* Disclosure of Market Risk Sensitive Instruments Release.

[534] *See* Proposed Accounting Standards Update 2012–200 *Disclosure about Liquidity Risk and Interest Rate Risk—Financial Instruments (Topic 825),* Financial Accounting Standards Board (Issued June 27, 2012), *available at http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176160135003.*

This Exposure Draft was partly in response to demand by users for audited, standardized, and consistent disclosures by public companies. The Exposure draft noted that, as part of a May 2010 proposed Accounting Standards Update (Accounting for Financial Instruments and Revisions to the Accounting for Derivative Instruments and Hedging Activities—Financial Instruments (Topic 825) and Derivatives and Hedging (Topic 815)), the FASB performed extensive outreach and received feedback that the risks inherent in a class of financial instruments and the way in which an entity manages those risks through its business operations should be instrumental in developing the reporting model for financial instruments. The important risks identified by users of financial statements during the FASB's outreach efforts were credit risk, liquidity risk, and interest rate risk. *See also supra* note 503.

[535] *See Accounting for Financial Instruments Disclosures About Liquidity Risk and Interest Rate Risk Comment Letter Summary,* Financial Accounting Standards Board, *available at http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176160500931.*

[536] *See id.* These respondents also asserted that institutions are required by regulation to ensure that risks are monitored using processes that are commensurate with the complexity of their business. *See id.*

[537] *See id.*

3. Disclosure of Approach to Risk Management and Risk Management Process

Item 503(c) focuses exclusively on disclosure of significant risks and does not address disclosure of a registrant's strategy for managing risk. Item 305(b), however, requires disclosure about a registrant's primary market risks and how those risks are managed. In the past, Commission staff has discouraged registrants from including mitigating language in their Item 503 risk factor disclosure because of concern that mitigating language could dilute investors' perception of the magnitude of the risk. As a result, registrants typically do not discuss their efforts to mitigate risk in connection with their risk factors disclosure, although some registrants describe their risk management practices elsewhere in their filings, such as in MD&A and as required by Item 305 for market risk.

Disclosure about a registrant's approach to risk management could enhance investor understanding of the possible impact of a disclosed risk and the registrant's overall risk profile. Division staff has observed that most large financial institutions have implemented enterprise risk management programs and currently include detailed disclosure about those programs in their filings. Additional disclosure about changes to, or significant deviations from, the stated policies could provide investors with important information about the registrant's exposure to risk.[538] Registrants that do not provide disclosure about a formal enterprise risk management program may instead provide disclosure about management's general approach to risk management as well as specific efforts to mitigate individual significant risks.

We are mindful of the potential drawbacks of requiring registrants to provide risk management or risk mitigation disclosure. Disclosure of management's efforts to mitigate risk may suggest to investors that the registrant's risk exposure is not significant. In addition, risk management strategies could include confidential or proprietary information and disclosure could result in competitive harm to the registrant. For example, a registrant may develop and rely on a proprietary method for hedging financial risk, and disclosure of the method could allow others to exploit or trade against the method such that it is no longer effective or becomes too expensive.[539]

a. Request for Comment

169. Should we require registrants to describe their risk management processes? If so, what level of detail would be appropriate? If a registrant has no formal risk management approach or process, should we require it to describe how it monitors and evaluates risk?

170. Should we require registrants also to describe their assessment of any risk management process? If so, how often should such disclosure be required?

171. Should we require registrants with complex risk management approaches or processes to provide only an enterprise-level description, or is a more granular description appropriate for these registrants?

172. Should we require registrants to disclose when risk tolerance limits or other fundamental aspects of its risk management approach are waived or changed, including any assumptions or relevant changes in business strategy that underlies the new limits or policies?

173. Should we require registrants to identify, if material, other "primary risk exposures" not already addressed and to disclose actions taken to manage those risks?

174. How could we facilitate a more integrated discussion of risk exposure and risk mitigation? Should we require registrants to disclose management's view of how material risk exposures are related and how risk mitigation actions are connected?

175. To the extent we require disclosure of risk management and risk management processes, should we move the disclosure about the extent of a board of directors' oversight of risk from Item 407(h) to this new requirement? Similarly, should we move compensation risk disclosure to this new requirement, or should we otherwise provide an option for compensation risk disclosure to be given in the risk management discussion rather than in the compensation discussion?

176. Should we require registrants to disclose their efforts to manage or mitigate each risk factor disclosed, similar to the risk management disclosure required for market risk under Item 305(b)(1)(ii)? What are the challenges, including those associated with preparation and competitive harm, with this disclosure?

177. Would additional disclosure about risk mitigation inhibit investors' ability to fully appreciate the significance of the risk? Would requiring a registrant to explain how it addresses a disclosed risk discourage registrants from disclosing generic or insignificant risks? Alternatively, would registrants provide boilerplate disclosure about how they address less meaningful risks, thereby resulting in even longer risk factor disclosure?

178. Should we require registrants to address mitigation or management of each risk factor as part of the risk management discussion? If so, should we also clarify that, although references to the general risk management discussion will not satisfy this requirement, cross-references to appropriate portions of MD&A or the financial statements will, if disclosure otherwise would be redundant?

179. Should we require registrants to disclose their known uncertainties about their risk management and risk management policies and how these might affect the registrant?

4. Consolidating Risk-Related Disclosure

Outside of Items 503(c) and 305, a number of Items in Regulation S–K elicit risk-related disclosures. These include Item 103, related to material litigation and certain environmental proceedings; Item 101(d)(3), in connection with risk related to foreign operations; Item 303(a), in that material trends, uncertainties, or events that are required to be described may also speak to certain risks; and Item 407(h), regarding the extent of a board's role in risk oversight. In the S–K Study, the staff recommended that we consider whether to consolidate requirements relating to risk factors, legal proceedings, and other quantitative and qualitative information about risk and risk management into a single requirement.[540] We seek input on whether investors would benefit from such a consolidation of risk-related disclosures and whether such a requirement would present any challenges to registrants.

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[538] For an example of a registrant deviating from its stated risk management policies, *see Report of Anton R. Valukas, Examiner,* In Re Lehman Brothers Holdings Inc., et al., Vol. I at 167–168 (discussing evidence that management disregarded its risk controls with respect to bridge equity and bridge debt).

[539] Commission concern for protecting proprietary strategies in connection with Item 305 disclosures is reflected in four provisions addressing proprietary concerns. *See* Disclosure of Market Risk Sensitive Instruments Release. The four provisions are: (i) The sensitivity analysis and VaR alternatives for quantitative information; (ii) the option to report average, high, and low sensitivity analysis and VaR instead of year end information; (iii) for interim reports, the need for disclosure of material changes since the end of the most recent fiscal year; and (iv) requiring a combined, not separate, sensitivity or VaR disclosures for voluntarily disclosed instruments, positions, or transactions.

[540] *See* S–K Study at 99.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One comment letter supported the suggestion to consider consolidating all risk-related requirements, positing that consolidation would reduce redundant disclosure and provide investors with a "holistic view of risk through the eyes of management."[541] Another commenter recommended requiring better integration among the financial statements, business description, risk disclosures, market risk disclosures and the discussion of results in MD&A.[542]

b. Request for Comment

180. Should we require registrants to provide a consolidated discussion of risk and risk management, including legal proceedings, in a single section of a filing? If so, what information should be included? How should this information be presented?

181. How could investors benefit from a consolidated discussion of risk factors, legal proceedings and other quantitative and qualitative information about market risk and risk management? What would be the challenges of requiring such a presentation?

182. How would a consolidation of risk-related disclosure affect the cost of preparing a filing, if at all?

D. Securities of the Registrant

Disclosure about a registrant's capital stock and transactions by registrants in their own securities helps inform investment and voting decisions by providing investors with information about a security that can be useful in assessing its value. Several items in Regulation S–K require this and related disclosure about a registrant's securities:

- Item 202 requires a description of the terms and conditions of securities that are being registered;[543]
- Item 701 requires disclosure of recent sales of unregistered securities and use of proceeds from registered offerings of securities;[544] and
- Item 703 requires tabular disclosure of shares of equity securities purchased by the registrant and affiliated purchasers.[545]

Additionally, Item 201(b)(1) requires disclosure of the number of holders of each class of a registrant's common equity.[546] We are seeking public input on the disclosure requirements of Items 201(b)(1),[547] 202, 701 and 703 to help assess whether any of the disclosure requirements should be modified and whether we should add any new disclosure requirements. In addition, we welcome comment on the challenges for registrants related to complying with these disclosure requirements or any new disclosure requirements.

1. Related Stockholder Matters—Number of Equity Holders (Item 201(b))

Item 201(b)(1) requires disclosure of the approximate number of holders of each class of common equity as of the latest practicable date.[548] Instruction 3 to Item 201 specifies that the number of holders may be based upon the number of record holders or also may include individual participants in security position listings, as provided under Rule 17Ad–8[549] of the Exchange Act.[550] Instruction 3 to Item 201 provides that the method of computation chosen shall be indicated.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended eliminating the requirement to disclose the number of security holders under Item 201(b), stating that it does not provide meaningful information since many stockholders hold their securities through a nominee.[551]

b. Discussion

Several decades ago, most investors of U.S. publicly traded registrants owned their securities in registered form, meaning that the securities were directly registered in the name of a specific investor on the record of security holders maintained by or on behalf of the registrant. Today, the vast majority of investors own their securities as a beneficial owner[552] through a securities intermediary,[553] such as a broker-dealer or bank.[554] This is often referred to as holding securities in nominee or "street name." The Commission first adopted a requirement to disclose the number of record holders of a class of securities in 1938, when it adopted the requirement that registrants submit proxy statements to each shareholder whose proxy is being solicited.[555]

In 1964, the Commission proposed amending Form 10–K to require registrants to disclose, in addition to the number of record holders, the amount of each class of equity securities known by the registrant to be held "in street names."[556] Commenters generally opposed the proposal on the grounds that the required information would be difficult to obtain and of little use to investors, and the Commission decided not to require disclosure of this information.[557] In 1980, the Commission adopted Item 4 to Form 10–K, which consolidated disclosures relating to the market for the registrant's securities, including the number of holders of common stock, into a single item.[558] As adopted, Item 4 to Form 10–K integrated the disclosure requirements of a new Item 9 in Regulation S–K, which the Commission adopted concurrently.[559]

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[541] *See* CCMC.

[542] *See* CFA Institute.

[543] Item 202 of Regulation S–K [17 CFR 229.202]. Item 202 disclosure is not required in Forms 10–Q or 10–K.

[544] Item 701 of Regulation S–K [17 CFR 229.701].

[545] Item 703 of Regulation S–K [17 CFR 229.703].

[546] Item 201(b)(1) of Regulation S–K [17 CFR 229.201(b)(1)].

[547] As part of its work to develop recommendations for the Commission for potential changes to update or simplify the requirements, the staff is separately considering paragraphs (a), (c) and (d) of Item 201 relating to market information, the effect of an offering or business combination on shareholder ownership, dividends and securities authorized for issuance under equity compensation plans. For a description of this project, *see* Section I. Item 201(e) (performance graph) falls outside the scope of this release because this disclosure is required only in proxy statements.

[548] *Id.*

[549] Exchange Act Rule 17Ad–8 [17 CFR 240.17Ad–8]. The rule defines "securities position listing," with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, as a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date. The rule also states that, upon request, a registered clearing agency must furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee.

[550] Item 201 of Regulation S–K [17 CFR 229.201].

[551] *See* Shearman.

[552] We recognize the term "beneficial owner" and "beneficial ownership" are defined in certain of our rules, such as under Exchange Act Rules 13d–3, 16a–1 and 14b–2. Our use of the term here is not intended to suggest that individuals holding in "street name" are, or should be, "beneficial owners" for purposes of these Exchange Act rules. [17 CFR 240.13d–3; 17 CFR 240.16a–1; 17 CFR 240.14b–2].

[553] For purposes of Commission rules pertaining to the transfer of certain securities, a "securities intermediary" is defined under Exchange Act Rule 17Ad–20 [17 CFR 240.17Ad–20] as a clearing agency registered under Exchange Act Section 17A [15 U.S.C. 78q–1] or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others in its capacity as such.

[554] In 1976, the Commission reported to Congress on the effects of the practice of registering securities in other than the name of the beneficial owner. In its report the Commission stated that 23.7% of shares were held in nominee and street name in 1964 and 28.6% of shares were held in nominee and street name in 1975. *Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934,* Dec. 3, 1976. Based on an analysis of available data over the period 2008 through 2010, the Commission's Division of Economic and Risk Analysis ("DERA") estimates that over 85% of the holders of securities in the U.S. markets hold through a broker-dealer or a bank that is a DTC participant. More recently, and according to one study, shares held in street name continue to account for over 80% of all shares outstanding of U.S. publicly listed companies. *See* PricewaterhouseCoopers LLP, *Proxy Pulse,* Third Edition 2015 at 8.

[555] *See* Amended Proxy Rules, Release No. 34–1823 (Aug. 11, 1938) [3 FR 1991 (Aug. 13, 1938)]. This rule required registrants to furnish, upon written request of the record holder being solicited, the approximate number of record holders of any specified class of securities of which any of the holders had been or were being solicited.

[556] *See* Annual Reports; Notice of Proposed Amendments, Release No. 34–7494 (Dec. 31, 1964) [30 FR 346 (Jan. 12, 1965)].

Item 201(b)'s reference to record holders is consistent with Section 12(g) of the Exchange Act. Section 12(g) requires issuers that are not banks, bank holding companies or savings and loan holding companies and have total assets exceeding $10 million to register a class of equity securities if the securities were "held of record" by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors.[560] When Congress enacted Section 12(g) in 1964, most security holders in the United States owned their securities as record holders.

c. Request for Comment

183. Should we retain or eliminate Item 201(b)(1)? Why? If retained, should we modify the item and if so, how?

184. As the vast majority of investors now hold their shares in street name, does disclosure about the number of record holders continue to be important to investors? Should we require registrants to disclose the amount of each class of equity securities held in street name? Should we require registrants to disclose the number of beneficial owners? If so, how should we define "beneficial owner" for purposes of Item 201(b)(1)? How would investors benefit from this additional information? What would be the challenges registrants might face in tracking the number of beneficial owners?

185. What types of investors or audiences are most likely to value the information required by Item 201(b)(1)?

2. Description of Capital Stock (Item 202)

Item 202(a)–(d) and (f) requires a brief description of the capital stock, debt, warrants, rights, American Depositary Receipts or any other securities that are being registered.[561]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. None.

b. Discussion

Item 202 derives from Schedule A of the Securities Act, which requires disclosure of the capitalization of the registrant, including a description of the classes of capital stock and funded debt and any securities covered by options.[562] These requirements were included in the earliest forms of registration statements.[563] As part of revision and simplification efforts in 1947, the Commission amended this requirement to eliminate the description of securities that are not being registered, except to the extent material to an evaluation of the securities being registered.[564] In 1982, Item 202 was included in Regulation S–K [565] as part of the "offering-oriented items" [566] and is currently required only in registration statements and some proxy statements.[567]

While registrants are required to file as exhibits complete copies of their articles of incorporation and bylaws as currently in effect, registrants are not required to describe these documents or their registered securities in their periodic filings.[568] A summary description of the material terms and conditions of the registrant's securities, as provided under Item 202, is not required in periodic reports and most registrants do not include such disclosure. To find this information, investors typically must locate this disclosure either in the registrant's exhibits, as amended, or in the registrant's Form 8–A, which often incorporates by reference from a prior Form S–1.

Changes in the terms and conditions of registered securities are disclosed in Form 8–K and Schedule 14A, which require discussion of modifications to the rights of any class of securities and amendments to the articles of incorporation or bylaws.[569] Frequently, these disclosures report discrete and specific changes to the overall terms and conditions of the registered securities such as individual amendments to the articles of incorporation to increase the number of shares authorized. A Form 8–K filed to report an amendment to the articles of incorporation or bylaws may be limited to the text of the amendment, however, the registrant must file a complete copy of the articles of incorporation or bylaws with its next Securities Act registration statement or periodic report.[570] We are seeking public input on whether a comprehensive discussion of registered securities in periodic reports would facilitate access to important disclosure for investors in the secondary market.

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[557] *See* General Form for Annual Reports, Release No. 34–7545 (Mar. 5, 1965) [30 FR 3430 (Mar. 16, 1965)] ("1965 Amendments to Form 10–K Adopting Release").

[558] *See* 1980 Form 10–K Adopting Release (noting that the new item to Form 10–K constituted "an amalgam" of various other existing requirements.).

[559] *Id.* Among other things, Item 9 of Form 10–K required registrants to "[s]et forth the approximate number of holders of common stock securities of the registrant as of the latest practicable date." Instruction 1 to Item 9 provided that the computation of the approximate number of holders "may be based upon the number of record holders or may also include individual participants in security position listing." *Id.*

[560] 15 U.S.C. 781(g). *See also supra* note 14.

[561] Items 202(a)–(d) and (f) of Regulation S–K [17 CFR 229.202(a)–(d) and (f)]. Item 202(e) is outside the scope of this release. This item requires that if securities other than common stock are to be registered and there is an established trading market for such securities, registrants are required to provide market information for such securities comparable to that required by Item 201(a) of Regulation S–K. The staff is separately considering Item 201(a) in developing its recommendations for potential changes to update or simplify certain disclosure requirements. For a description of this project, see Section I.

[562] Paragraphs 9–12 of Schedule A of the Securities Act [15 U.S.C. 77aa(9)–(12)].

[563] *See* Form A–2, Items 9 through 20. Tabular disclosure included details about amounts authorized, amounts outstanding, related balance sheet information, amounts held in treasury, amounts held by subsidiaries and parent companies, amounts reserved for officers and employees and amounts reserved for options and warrants. *See* S–K Study at footnote 238.

[564] *See* Miscellaneous Amendments, Release No. 33–3186 (Jan. 8, 1947) [12 FR 224 (Jan. 15, 1947)]. *See also* Notice of Proposed Rules and Form and Proposed Repeal of Certain Forms, Release No. 33–3171 (Nov. 18, 1946) [11 FR 13764 (Nov. 22, 1946)].

[565] *See* 1982 Integrated Disclosure Adopting Release. In adding Item 202 of Regulation S–K, the Commission revised the item to require registrants to discuss the effect on control of the company of certain charter and bylaw antitakeover provisions. Item 202(a)(5) of Regulation S–K [17 CFR 229.202(a)(5)].

[566] *See* Reproposal of Comprehensive Revision to System for Registration of Securities Offerings, Release No. 33–6331 (Aug. 6, 1981) [46 FR 41902 (Aug. 18, 1981)] at 41917.

[567] *See, e.g.,* Item 9 of Form S–1, Item 9 of Form S–3 and Item 1 of Form 8–A. Item 202 disclosure is also required in proxy statements with respect to the authorization or issuance of securities or the modification or exchange of any class of securities of a registrant. *See* Items 11 and 12 of Schedule 14A [17 CFR 240.14a–101].

[568] *See* Item 601(b)(3) of Regulation S–K [17 CFR 229.601(b)(3)]. Under ASC 505–10–50–3, registrants are required to summarize the "pertinent rights and privileges of the various securities outstanding."

[569] Item 3.03 of Form 8–K requires disclosure of material modifications to rights of security holders while Item 5.03 requires disclosure of amendments to the articles of incorporation or bylaws for amendments not disclosed in a proxy or information statement. Item 5.03 of Form 8–K also requires disclosure of changes in fiscal year other than by means of a submission to a vote of security holders through the solicitation of proxies (or otherwise) or an amendment to the articles of incorporation or bylaws [17 CFR 249.308].

Item 12 of Schedule 14A requires disclosure if action is to be taken regarding the modification of any class of securities of the registrant, or the issuance or authorization for issuance of securities of the registrant in exchange for outstanding securities. Section (b) of Item 12 requires disclosure of any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in Item 202 of Regulation S–K. Item 19 of Schedule 14A requires disclosure of amendments to the charter, bylaws or other documents.

c. Request for Comment

186. How do investors in the secondary market access information about the terms and conditions of a registrant's securities? Do investors rely only on the bylaws and articles of incorporation filed as exhibits to the registrant's Form 10–K?

187. In addition to the disclosure requirements in registration statements and certain proxy statements, should we require registrants to provide Item 202 disclosure each year in Form 10–K? Would requiring this information in the annual report facilitate investor access to important disclosure? Should we require registrants to disclose in their quarterly and annual reports whether changes have been made to the terms and conditions of their securities during the reporting period? Why? Are the Form 8–K requirements sufficient?

188. What types of investors or audiences are most likely to value the information required by Item 202?

189. What is the cost of providing the disclosure required by Item 202, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 202.

190. What are the benefits of providing the disclosure required by Item 202? How could the benefits change if we made any of the changes contemplated here? Please provide quantified or qualitative estimates where possible relating to disclosure under Item 202.

3. Recent Sales of Unregistered Securities (Items 701(a)–(e))

Item 701(a)–(e) requires disclosure of all sales of unregistered securities sold by the registrant within the past three years and specifies disclosure of: The date, title and amount of securities sold; the principal underwriters and other purchasers, if the securities were not publicly offered; the aggregate offering price for securities sold for cash and the nature of the transaction and the nature and aggregate amount of consideration received by the registrant; the exemption from registration claimed; and the terms of conversion or exercise.[571] These disclosure requirements also apply to securities issued in exchange for property, services, or other securities.[572]

a. Comments Received

S–K Study. Two commenters stated that disclosure of Item 701 information is not meaningful for investors.[573] They also stated that such disclosure should not be required in registration statements because, to the extent recent sales of securities are material to investors, registrants would be required to disclose that information in their discussion of liquidity and capital resources under MD&A pursuant to Items 303(a)(1) and (2).[574]

Disclosure Effectiveness Initiative. One commenter recommended that the disclosure of sales of unregistered securities be limited to sales that are material to the issuer.[575] This commenter also suggested reconciling the disclosure requirements of Item 701, which requires disclosure of *all* unregistered sales of common equity, with those of Item 3.02 of Form 8–K, which does not require disclosure of sales of less than one percent of the number of shares outstanding of the equity securities being sold. Another commenter recommended eliminating Item 701, noting overlap with Form 8–K and also stating that, for a material sale of securities, registrants typically discuss the transaction in MD&A.[576]

b. Discussion

Item 701's requirement to disclose recent sales of unregistered securities is based, in part, on Schedule A.[577] A disclosure requirement in Form S–1 [578] of sales of unregistered securities for the past three years predated Regulation S–K.[579] The requirement was moved to Regulation S–K in connection with adoption of the integrated disclosure system, but it continued to apply only to certain registration statements.[580]

In 1996, the Commission adopted amendments to require timely disclosure of unregistered equity offerings and amended Forms 10–K and 10–Q to include Item 701(a)–(e).[581] This amendment was intended to address concerns that unregistered offerings were frequently undisclosed and such offerings could materially affect the financial condition of registrants or result in significant dilution to existing shareholders.[582] The Commission also expanded Item 701 to require registrants to disclose terms of conversion or exercise for convertible or exchangeable equity securities.[583]

In 2004, the Commission sought more timely disclosure of unregistered equity offerings and added Item 3.02 to Form 8–K. Item 3.02 requires registrants to disclose, within four business days,[584] the information specified in paragraphs (a) and (c) through (e) of Item 701[585] when aggregate equity securities sold are equal to or exceed one percent of the number of shares outstanding of the class of equity securities sold.[586] The Commission initially proposed to move the Item 701 disclosure requirement out of Forms 10–Q and 10–K and into Form 8–K.[587] This proposal was based on the Commission's belief that more timely disclosure of this information would benefit investors due to the potentially significant dilutive effect on existing investors' holdings.[588] In response to comments on the proposing release, the Commission adopted the one percent threshold for disclosure on Form 8–K, noting that registrants would still be required to report all other unregistered sales of equity securities in their periodic reports.[589] Concurrently, the Commission revised Forms 10–K and 10–Q to require disclosure only of unregistered sales of equity securities not previously disclosed on Form 8–K.[590]

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[570] *See* Item 601(b)(3) of Regulation S–K [17 CFR 229.601(b)(3)].

[571] Item 701(a)–(e) of Regulation S–K [17 CFR 229.701(a)–(e)]. For a discussion of Item 701(f), *see* Section IV.D.4.

[572] *Id.*

[573] *See* Silicon Valley and M. Liles (also stating that cash flow statements would contain "more detailed information" about the proceeds of securities issuances in those periods, as would the statements of stockholders' equity for the sales of equity securities).

[574] *See id.* Both commenters also noted that registrants would be required to disclose the terms of any material sales of securities made to related persons pursuant to Item 404.

[575] *See* SCSGP.

[576] *See* CCMC.

[577] Paragraph 19 of Schedule A of the Securities Act is broader than Item 701 because it calls for the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, including the price at which such security was offered. *See* Securities Act of 1933 Schedule A Paragraph 19 [15 U.S.C. 77aa(19)]. Other differences include Item 701's three-year timeframe, as opposed to two years in Schedule A, and the fact that Item 701 is limited to unregistered sales of equity securities while Schedule A contains neither of these limitations.

[578] 17 CFR 239.11.

[579] *See, e.g.,* Adoption of Amendments to Form S–1, Release No. 33–3434 (Jan. 31, 1952) [17 FR 1177 (Feb. 7, 1952)] (adopting disclosure requirements to Form S–1 substantially similar to current Item 701(a)–(e) of Regulation S–K). *See also* 1980 Proposed Revisions (noting that the requirement to disclose sales of unregistered securities during the past three years in proposed Form C was the same as in Item 25 of Form S–1 at that time).

[580] *See* 1982 Integrated Disclosure Adopting Release. When Item 701 was moved to Regulation S–K, this disclosure was required in Forms 10–Q, S–1, S–11 and 10. The Commission had adopted a similar requirement for Forms 10–K and 10–Q in 1972. *See* Adoption of Amendments to Annual Report Form 10–K and Quarterly Report Form 10–Q Under the Securities Exchange Act of 1934, Release No. 34–9443 (Jan. 10, 1972) [37 FR 601 (Jan. 14, 1972)]. The Commission eliminated this requirement from Form 10–K in 1980, consistent with recommendations by the Sommer Report. *See* 1980 Form 10–K Adopting Release. According to the Sommer Report, the requirement was unnecessary in Form 10–K because the same information was available in the financial statements and required to be disclosed in Form 10–Q. *See* Sommer Report at 486.

[581] *See* Periodic Reporting of Unregistered Equity Sales, Release No. 34–37801 (Oct. 10, 1996) [61 FR 54506 (Oct. 18, 1996)] ("Periodic Reporting of Unregistered Equity Sales Release").

[582] *See, e.g.,* Streamlining Disclosure Requirements Relating to Significant Business Acquisitions and Requiring Quarterly Reporting of Unregistered Equity Sales, Release No. 33–7189 (Jun. 27, 1995) [60 FR 35656 (July 10, 1995)] (expressing concern about the lack of disclosure in the context of addressing issues with Regulation S offerings); Periodic Reporting of Unregistered Equity Sales Release.

[583] *See id. See also* Item 701(e) of Regulation S–K [17 CFR 229.701(e)].

Some of the disclosure required by Item 701(a)–(e) may overlap with disclosure in the statement of stockholders' equity, which is required in the annual financial statements,[591] or in the notes to the financial statements. For example, under U.S. GAAP, registrants must disclose the number of shares sold, title of class of stock sold and net proceeds.[592] Registrants are also required to discuss the rights and privileges of the securities outstanding, such as conversion or exercise prices and pertinent dates.[593] On the other hand, U.S. GAAP does not require disclosure of underwriters, underwriting discounts, the exemption claimed or the identity of the purchasers, as required by Item 701. In addition, accounting standards do not distinguish between registered and unregistered sales of securities.

c. Request for Comment

191. Should we retain or eliminate Item 701(a)–(e)? Why? Does the disclosure required under Item 701(a)–(e) provide important information that is not available in either MD&A or the financial statements?

192. Does the Item 3.02 of Form 8–K disclosure requirement for issuances of one percent or greater and the Item 701 requirement for all issuances strike the right balance between disclosing larger issuances promptly and all others quarterly? Is one percent an appropriate threshold? If not, what would be an appropriate threshold and why?

193. Should we revise Forms 10–K and 10–Q to require disclosure of all unregistered sales of securities during the reporting period, including those already reported on Form 8–K? What would be the benefits to investors? Alternatively, should we require registrants to cross-reference or include a hyperlink to any previously filed Form 8–K containing Item 701 information for the reporting period or incorporate such forms by reference? What would be the advantages or disadvantages associated with either of these approaches?

194. Should we remove the Item 701 disclosure requirement from Forms 10–K and 10–Q? If so, should we revise Item 3.02 of Form 8–K to remove the one percent threshold and require registrants to disclose all unregistered sales of securities on Form 8–K? Alternatively, should we eliminate Item 3.02 of Form 8–K and instead require disclosure only in Forms 10–K and 10–Q?

195. Disclosure provided in response to Item 701(a)–(e) can range from a single paragraph to multiple pages. In Form 10–K, this disclosure is provided as part of Item 5 of Part II (Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities) while in Form 10–Q this disclosure is provided as Item 2 of Part II (Unregistered Sales of Equity Securities and Use of Proceeds). Should we require this disclosure where it currently appears, in the context of the liquidity discussion in MD&A, or elsewhere?

196. Do registrants face any particular challenges in complying with the item's disclosure requirements?

4. Use of Proceeds From Registered Securities (Item 701(f))

Item 701(f) requires a registrant to disclose the use of proceeds from its first registered offering.[594] The registrant must provide the following disclosure in its first Exchange Act periodic report after effectiveness of the Securities Act registration statement:

- The effective date of the Securities Act registration statement;
- the offering date or an explanation of why the offering has not commenced;
- if the offering terminated before any securities were sold, an explanation of the termination;
- if the offering did not terminate before any securities were sold, registrants must disclose (i) whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered; (ii) the names of the managing underwriters, if any; (iii) the title of each class of securities registered; (iv) for each class of securities, the amount registered, the aggregate offering price of the amount registered, the amount sold, and the aggregate offering price of the amount sold to date; (v) the amount of expenses incurred by the registrant in connection with the issuance and distribution of the securities registered; (vi) net offering proceeds after deducting expenses; (vii) the amount of net offering proceeds used for certain enumerated purposes; and (viii) a brief description of any material change from the prospectus disclosure about the use of proceeds.[595]

Item 701(f) requires registrants to provide disclosure in each subsequent periodic report to the extent it has changed since the last periodic report filed. Registrants must continue to provide this disclosure until the application of all of the offering proceeds or termination of the offering.

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[584] *See* Item 3.02(a) of Form 8–K (stating the registrant has no obligation to disclose information under this Item 3.02 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the registrant must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the equity securities are to be sold).

[585] *See* 2004 Form 8–K Adopting Release.

[586] Item 3.02(b) of Form 8–K. SRCs are not required to file a Form 8–K if the securities sold, in the aggregate, constitute less than five percent of the number of shares outstanding of the class of equity securities sold.

[587] Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date, Release No. 33–8106 (June 17, 2002) [67 FR 42914 (June 25, 2002)] ("2002 Form 8–K Proposing Release").

[588] *See id.* The Commission solicited comment on whether there was value to requiring the "aggregate listing" of sales made during quarterly and annual periods even though Form 8–K would report each sale as it occurred. The Commission also solicited comment on the question of whether the Form 8–K disclosure should be limited to large unregistered sales and suggested possible disclosure thresholds equal to a percentage of the company's outstanding shares or a percentage of the company's market float. *See id.* at 42923.

[589] *See* 2004 Form 8–K Adopting Release at 15603 ("In response to concerns raised by commenters, we have limited the disclosure of sale of unregistered equity securities required to be filed on Form 8–K. Under the new item, no Form 8–K need be filed if the equity securities sold in the aggregate since the company's last report filed under this item or last periodic report, whichever is more recent, constitute less than 1% of the company's outstanding securities of that class.").

[590] *See id.* Item 701 information need not be disclosed in a Form 10–K if it has been previously included in a Form 10–Q or Form 8–K. *See* Item 5(a) of Form 10–K. Similarly, Item 701 information need not be disclosed in a Form 10–Q if it has been previously disclosed in a Form 8–K. *See* Item 2(a) of Part II of Form 10–Q.

[591] Rule 3–04 of Regulation S–X [17 CFR 210.3–04]. Registrants are not required to provide a statement of stockholders' equity with their interim financial statements.

[592] *See* ASC Topic 505–10–50–2. Registrants are not required to disclose the aggregate offering price.

[593] *See* ASC Topic 505–10–50–3. ASC Topic 470–10–50–5 requires the same information for debt securities. While the date of sale is not required, registrants usually include it in their discussions of the rights and privileges of securities sold.

[594] Item 701(f) of Regulation S–K [17 CFR 229.701(f)].

[595] *Id.*

a. Comments Received

S–K Study. Two commenters recommended eliminating Item 701(f), indicating the requirement does not result in useful information for investors since companies cannot necessarily determine whether a dollar spent was derived from revenue or from the net proceeds of a securities offering, and that the discussion of cash flow in MD&A should already address material uses of cash.[596]

Disclosure Effectiveness Initiative. None.

b. Discussion

The precursor to Item 701(f) originated in Rule 463 of the Securities Act, which was adopted with related Form SR in 1971.[597] In proposing this rule, the Commission noted that disclosure about the progress of an offering of registered securities would enable the Commission to know whether the registrant is required to file and use an updated Section 10(a)(3) prospectus and whether "dealers effecting transactions in the registered security must furnish a copy of the prospectus to purchasers." [598] The Commission further noted that, if registrants have used offering proceeds for purposes different from those stated in the prospectus, investors may have been misled as to the purposes for which the funds supplied by them would be applied. Information about the actual use of proceeds following the offering would indicate whether statements in the prospectus were borne out by the registrant's subsequent actions.[599]

In 1980, the Commission proposed revisions to Rule 463 and Form SR to require, among other things, disclosure of use of proceeds beyond first-time registered offerings.[600] After considering comments on the proposal, the Commission concluded it was not clear that the benefits from such an extension would outweigh the additional reporting burdens imposed on registrants.[601] At the same time, the Commission affirmed the use of Form SR for first-time issuers and noted that commenters generally did not object to the use of Form SR to elicit information about use of proceeds from first-time issuers.[602]

In 1997, the Commission eliminated Form SR and adopted Item 701(f) to require disclosure about the use of offering proceeds in periodic reports.[603] The Commission stated its belief that relocating the disclosure to periodic reports would make it more accessible to investors, since periodic reports were more commonly monitored by the public than Form SR.[604] The adoption of Item 701(f) led to use of proceeds information being reported on a quarterly basis instead of semi-annually through Form SR.

Other disclosure requirements may elicit information about the use of offering proceeds. For example, registrants may disclose the proceeds from initial public offerings as a material source of cash in the liquidity discussion within MD&A.[605] Changes in a registrant's statement of cash flow and statement of stockholders' equity in the financial statements may also indicate the progress of its initial registered offering. However, certain information about the progress of an offering, such as when a registrant has not commenced an offering or the offering is terminated before any securities were sold, may not be available to investors outside of disclosures required by Item 701(f).

c. Request for Comment

197. Should we retain or eliminate disclosure about the use of offering proceeds required by Item 701(f)? Why? If we retain this requirement, how could we improve it? For example, should we modify the item, such as by expanding it to offerings other than a registrant's first registered offering or by requiring other additional disclosure? Why?

198. In Form 10–K, this disclosure is provided as part of Item 5 of Part II (Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities) while in Form 10–Q this disclosure is provided as Item 2 of Part II (Unregistered Sales of Equity Securities and Use of Proceeds). Should we require this information in its current location, in the context of liquidity or elsewhere? Should we require disclosure only if the actual use of proceeds differs materially from the description of the offering?

5. Purchases of Equity Securities by the Issuer and Affiliated Purchasers (Item 703)

Item 703 requires tabular disclosure of purchases of registered equity securities by the registrant or any affiliated purchaser including:

- Total number of shares repurchased;
- average price paid per share;
- total number of shares purchased as part of publicly announced plans or programs; and
- maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs.[606]

Item 703 also requires footnote disclosure of (1) the date each plan or program was announced, (2) the dollar amount (or share amount) approved, (3) the expiration date (if any) of each plan or program, (4) each plan or program that has expired during the period covered by the table, and (5) each plan or program the registrant has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.[607]

Item 703 requires disclosure for each month included in the period covered by the report. Form 10–Q requires this information for any equity repurchase made in the quarter covered by the report,[608] while Form 10–K requires this disclosure for repurchases made in the fourth fiscal quarter of the registrant's fiscal year.[609]

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[596] *See* Silicon Valley; M. Liles.

[597] *See* Adoption of Rule 463 and Form SR Requiring Reports by First-Time Registrants of Sales of Registered Securities and Use of Proceeds Therefrom, Release No. 33–5141 (Apr. 19, 1971) [36 FR 7896 (Apr. 28, 1971)] ("Rule 463 Adopting Release"). Form SR was a stand-alone report required to be filed once every six months following the effective date of a registrant's first Securities Act registration statement.

[598] Notice of Proposal to Require Reports by First-Time Registrants of Sales of Registered Securities and Use of Proceeds Therefrom, Release No. 33–5130 (Feb. 8, 1971) [36 FR 3429 (Feb. 24, 1971)] at 3430.

[599] *See id.* As adopted, Rule 463 did not require a Form SR to be filed with respect to any offering of securities issued by any investment company registered under the Investment Company Act of 1940; any public utility company or public utility holding company required to file reports with any state or federal authority; or with respect to American depositary receipts for foreign securities. *See* Rule 463 Adopting Release.

[600] *See* Report of Sales of Securities, Release No. 33–6251 (Oct. 23, 1980) [45 FR 71811 (Oct. 30, 1980)]. The proposed requirement was intended to facilitate the determination of whether an issuer of a direct distribution or a best efforts underwritten offering that was not a first-time offering was complying with the prospectus delivery and updating requirements of Sections 4(3) and 10(a)(3) of the Securities Act.

[601] *See* Report of Sales of Securities and Use of Proceeds, Release No. 33–6346 (Sept. 21, 1981) [46 FR 48137 (Oct. 1, 1981)].

[602] *See id.*

[603] *See* Phase Two Recommendations of Task Force on Disclosure Simplification Release.

[604] *See id.* The Commission also noted that consolidating the disclosure requirements into the periodic report forms should ease reporting burdens on registrants by reducing the number of forms required to be filed.

[605] *See* Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)] (requiring registrants to discuss and analyze "internal and external sources of liquidity") and Item 303(a)(2)(ii) of Regulation S–K (requiring registrants to discuss and analyze any known material trends, favorable or unfavorable, in capital resources, including changes between equity, debt and any off-balance sheet financing arrangements).

[606] Item 703 of Regulation S–K [17 CFR 229.703].

[607] Instruction 2 to paragraphs (b)(3) and (b)(4) of Item 703 of Regulation S–K [17 CFR 229.703].

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended the Commission and the FASB coordinate efforts to review and clarify the different disclosure objectives of Item 703 and U.S. GAAP to determine whether both requirements continue to provide distinct and useful information.[610] This commenter also recommended, alternatively, that if the Commission and the FASB determine that the requirements are still useful, that they issue joint guidance on how both requirements should work together.

Another commenter recommended enhanced disclosure of the "pros" and "cons" of share repurchase programs by addressing, among other things, (i) the time period specified for each program, (ii) the maximum number of shares authorized by the board to be repurchased, (iii) the cash (including any borrowings) spent on repurchases and dividends compared to that spent on reinvestment, and (iv) the impact of repurchase programs on corporate indebtedness.[611] This commenter also recommended that companies consider disclosing the sources of funds to finance stock buybacks.

b. Discussion

In 2003, the Commission adopted Item 703 to increase the transparency of security repurchases by registrants and their affiliates and to inform investors of registrants' stated repurchasing intentions and subsequent repurchases.[612] The Commission noted in the adopting release that public announcement of a repurchase is often followed by a rise in the registrant's stock price, and that studies have shown some registrants publicly announce repurchase programs but either do not repurchase shares or only repurchase a small portion of the publicly disclosed amount. Item 703 was intended to inform investors whether, and to what extent, registrants follow through on their original repurchase plans and to provide investors with information that could affect a registrant's stock price.[613]

In recent years, stock repurchases by registrants have increased significantly.[614] According to media reports, since 2004 U.S. companies have spent nearly $7 trillion repurchasing their own shares.[615] Common reasons for engaging in repurchases include returning excess cash to shareholders,[616] boosting earnings per share[617] and offsetting share dilution resulting from employee benefit plans.[618] Repurchases typically affect earnings per share by reducing the amount of shares outstanding,[619] except when repurchased shares are distributed to employees as compensation. Recent studies have found that, since the Commission adopted Item 703, registrants have announced smaller open market repurchases[620] and have completed announced open market repurchases at a higher rate.[621]

The staff has observed that registrants generally comply with the item requirements but often do not analyze the impact of stock repurchases in the context of MD&A. Even when the amount used to repurchase shares exceeds a registrant's net income or cash generated from operating activities for the reporting period, registrants do not always analyze these repurchases in MD&A.

While some of the disclosure required under Item 703 overlaps with requirements under U.S. GAAP,[622] there are differences between the two standards. Item 703 disclosure is required on a quarterly basis while U.S. GAAP requires annual disclosure. Additionally, disclosure requirements under U.S. GAAP vary depending on the type of transaction through which shares are repurchased, and in some situations U.S. GAAP disclosures are more extensive than those required under Item 703.[623] Disclosure provided under U.S. GAAP is also audited, unlike Item 703 disclosure. Typically, registrants provide disclosure about share repurchases in both the notes to the financial statement and in non-financial statement disclosures.

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[608] Item 2(c) of Part II of Form 10–Q [17 CFR 249.308a].

[609] Item 5(c) of Form 10–K [17 CFR 249.310].

[610] *See* SCSGP (specifying overlap between Item 703 and ASC Topic 505).

[611] *See* letter from William J. Klein and Thomas J. Amy (May 12, 2015) ("Klein and Amy 3").

[612] *See* Purchases of Certain Equity Securities by the Issuer and Others, Release No. 33–8335 (Nov. 10, 2003) [68 FR 64952 (Nov. 17, 2003)].

[613] *See id.*

[614] *See, e.g.,* Oliver Renick and Michael P. Regan, *Getting High on Their Own Supply,* Bloomberg Businessweek, July 16, 2015, *available* at *http://www.bloomberg.com/news/articles/2015-07-16/corporate-stock-buybacks-make-earnings-look-better* (citing data that companies in the S&P 500 spent more than $550 billion in stock repurchases in 2014); John Waggoner, *Beware the Stock-Buyback Craze,* The Wall Street Journal, June 19, 2015, *available at http://www.wsj.com/articles/beware-the-stock-buyback-craze-1434727038* (noting that stock repurchases are returning to pre-financial crisis levels and citing research indicating that companies in the S&P 500 repurchased about $148 billion of their own shares in the first quarter of 2015); Audit Analytics, *Research and Development Up Despite Stock Buybacks,* June 15, 2015, *available* at *http://www.auditanalytics.com/blog/research-and-development-up-despite-stock-buybacks* (citing research that stock buybacks have surpassed $2.1 trillion since the beginning of the first quarter of 2009 among S&P 500 companies).

[615] *See* Andrew Ross Sorkin, *Stock Buybacks Draw Scrutiny from Politicians,* The New York Times, Aug. 10, 2015, *available at http://www.nytimes.com/2015/08/11/business/stock-buybacks-draw-scrutiny-from-politicians.html* (citing data from Mustafa Erdem Sakinc of the Academic-Industry Research Network).

[616] *See, e.g.,* Maxwell Murphy and John Kester, *Buybacks Can Juice Per-Share Profit, Pad Executive Pay,* The Wall Street Journal, Oct. 19, 2014, *available at http://www.wsj.com/articles/buybacks-can-juice-per-share-profit-executive-pay-1414453356* ("Murphy and Kester").

[617] *See, e.g.,* Maxwell Murphy, *The Big Number,* The Wall Street Journal, Apr. 6, 2015, *available athttp://www.wsj.com/articles/the-big-number-1428362150* ("Murphy").

[618] *See, e.g.,* Gerrit De Vynck, *BlackBerry Plans Share Buyback to Offset Employee Incentives,* Bloomberg Business, May 21, 2015, *available at http://www.bloomberg.com/news/articles/2015-05-21/blackberry-planning-share-buyback-to-offset-employee-incentives; Ford Announces $1.8 Billion Share Buyback Program, Can Reduce Debt,* Chicago Tribune, May 7, 2014, *available at http://articles.chicagotribune.com/2014-05-07/marketplace/sns-rt-us-ford-stocks-buyback-20140507_1_ford-motor-co-ford-stock-103-million-shares. See also* Karen Brettell, David Gaffen and David Rohde, *The Cannibalized Company,* Reuters, Nov. 16, 2015, *available at http://www.reuters.com/investigates/special-report/usa-buybacks-cannibalized* (stating that the prevalence of share repurchases is the result of several factors: Pressure from activist investors; executive compensation programs that tie pay to earnings per share and share prices; increased global competition; and "fear of making long-term bets on products and services that may not pay off").

[619] *See* E.S. Browning, *Is the Surge in Stock Buybacks Good or Evil?,* The Wall Street Journal, Nov. 22, 2015, *available at http://www.wsj.com/articles/is-the-surge-in-stock-buybacks-good-or-evil-1448188684*; Murphy and Kester. *See also* Murphy (noting that 22 companies in the S&P 500 reported lower profits but still posted flat or positive earnings per share in 2014 solely from share repurchases, and that 308 companies in the index ended the year with fewer shares outstanding).

[620] *See* Alice A. Bonaimé, *Mandatory Disclosure and Firm Behavior: Evidence from Share Repurchases,* 90 Accounting Review 4, 1333 (2015) ("Bonaimé 2015").

[621] *See* Michael Simkovic, *The Effect of Mandatory Disclosure on Open Market Repurchases,* 6 Berkley Bus. L.J. 1, 96 (2009) (comparing a sample of post-2003 open market repurchases with literature on open market repurchases predating Item 703); Bonaimé 2015.

[622] The dollar amount and the number of shares repurchased are disclosed in the annual Statement of Shareholders' Equity, because U.S. GAAP requires the repurchase of stock to be deducted from capital stock, additional paid-in capital, and retained earnings. *See* ASC Topics 505–10–50, 505–30–30 and Rule 3–04 of Regulation S–X. This financial statement presents shareholders' equity activity in a roll forward of each of the shareholders' equity components from the beginning to the end of the annual period. Article 10 of Regulation S–X does not require an interim period statement of shareholders equity. Instead, Rule 10–01(a)(5) requires disclosure of events subsequent to the end of the most recent fiscal year that have occurred which have a material impact on the registrant.

[623] For example, for shares repurchased through accelerated share repurchase programs, registrants must disclose the nature and terms of the arrangement with the seller from which the registrant is acquiring its shares, including the number of shares subject to the contract, per share price terms and settlement options available. *See* ASC Topic 815–40–50–5.

While Item 703 requires disclosure of all monthly repurchases on a quarterly basis,[624] other jurisdictions require this disclosure more frequently.[625] We seek comment on whether we should require more frequent or more granular information about repurchases or whether the current disclosure requirements are sufficient.

c. Request for Comment

199. Is the information required under Item 703 about repurchases of a registrant's equity securities important to investors? If so, are there any revisions we could make to Item 703 to improve the disclosure provided to investors?

200. Should we require more granular information on repurchases of a registrant's equity securities? If so, what additional detail or more granular information should we require? For example, should we require disclosure about incurrence of indebtedness to fund repurchases or the impact repurchases had on performance measures, such as earnings per share or other items? If so, how should this information be formatted and presented?

201. Does Item 703 provide important information that is not also disclosed in a registrant's financial statements? Are there benefits to investors in providing this information in both the financial statements and in non-financial statement disclosure?

202. Item 703 requires disclosure of all repurchases of registered securities and does not have a de minimis requirement. Do investors find disclosure of all repurchases of securities during a registrant's fiscal quarter important to making a voting or investment decision? Should we adopt a general materiality standard or specify a monetary threshold for Item 703 disclosure in periodic reports?

203. Item 703 disclosure is required on a quarterly basis, while relevant U.S. GAAP disclosure is required on an annual basis. Should we require more frequent Item 703 disclosure? If so, what timeframe for reporting repurchases would be appropriate?

204. Should we require registrants to report repurchases on Form 8–K? For example, should we require Form 8–K disclosure only of repurchases that exceed a certain threshold, similar to Item 3.02 of Form 8–K, which requires registrants to disclose sales of equity securities that constitute more than one percent of the shares outstanding of the class of equity securities? If so, what should this threshold be and why?

E. Industry Guides

The Industry Guides express the disclosure policies and practices of the Division and are intended to assist registrants and their counsel in preparing disclosure for their filings.[626] Currently, there are five Industry Guides that address disclosures by: (i) Bank holding companies,[627] (ii) oil and gas programs,[628] (iii) real estate limited partnerships,[629] (iv) property-casualty insurance underwriters,[630] and (v) mining companies.[631] All five of the Industry Guides apply to disclosure in Securities Act registration statements. The Industry Guides for bank holding companies, property-casualty insurance underwriters, and mining companies also apply to disclosure in Exchange Act filings.[632]

We are seeking public input on whether the Industry Guides elicit disclosure that is important to investment and voting decisions. We are interested in commenters' views on whether the Industry Guides provide useful guidance for registrants that improves disclosure to investors. Additionally, we are seeking input on whether the Industry Guides or portions of the Industry Guides should be codified in Regulation S–K.[633]

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[624] *See* Item 2(c) of Part II of Form 10–Q and Item 5(c) of Form 10–K.

[625] For example, exchange listing requirements in Australia require disclosure of share repurchases by the next business day. *See* Australian Securities Exchange Listing Rule 3.8A, *available at http://www.asx.com.au/documents/rules/Chapter03.pdf.*

[626] Although the Commission published the Industry Guides, they do not constitute Commission rules and instead are statements of staff policy. *See* Rescission of Guides and Redesignation of Industry Guides, Release No. 33–6384 (Mar. 3, 1982) [47 FR 11476 (Mar. 16, 1982)] ("Industry Guide Release") ("These guides remain as an expression of the policies and practices of the Division of Corporation Finance and their status is unaffected by [the listing of the Industry Guides in Regulation S–K]." Id. at 11476).

[627] Securities Act and Exchange Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies. Industry Guide 3 was first published in 1976 as Securities Act Guide 61 and Exchange Act Industry Guide 3. *See* Guides for Statistical Disclosure by Bank Holding Companies, Release No. 33–5735 (Aug. 31, 1976) [41 FR 39007 (Sept. 14, 1976)]. There have been only minor revisions to the text of Industry Guide 3 since its re-designation as an Industry Guide in 1982. Revisions relating to non-performing loan disclosure requirements were implemented in 1983, and revisions relating to exposures to borrowers in certain foreign countries were implemented in 1986. *See* Revision of Industry Guide Disclosures for Bank Holding Companies, Release No. 33–6478 (Aug. 11, 1983) [48 FR 37609 (Aug. 19, 1983)]; Amendments to Industry Guide Disclosures by Bank Holding Companies, Release No. 33–6677 (Nov. 25, 1986) [51 FR 43594 (Dec. 3, 1986)].

[628] Securities Act Industry Guide 4—Prospectuses Relating to Interests in Oil and Gas Programs. Industry Guide 4 was first published in 1970 as Guide 55, which was redesignated as Securities Act Industry Guide 4 in 1982. *See* Definitive Guide for the Preparation of Prospectuses Relating to Interests in Oil and Gas Programs, Release No. 33–5036 (Jan. 19, 1970) [35 FR 1233 (Jan. 30, 1970)]. While the disclosure requirements for oil and gas producing activities were modernized in 2008 (at which time Industry Guide 2 was eliminated), the changes did not affect Securities Act Industry Guide 4. Securities Act Industry Guide 4 is focused on disclosure relating to the offering of interests in oil and gas programs, such as the terms of the offering, the participation in costs and revenues, application of proceeds and risk factors.

[629] Securities Act Industry Guide 5—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships. Industry Guide 5 was originally published in 1976 as Guide 60 and redesignated as Securities Act Industry Guide 5 in 1982. *See* Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships, Release No. 33–5692 (March 17, 1976) [41 FR 17403 (Apr. 26, 1976)]; Industry Guide Release. In 1991 the Commission expanded the application of Industry Guide 5 to include the preparation of registration statements for real estate investment trusts and all other limited partnership offerings, as applicable. *See* Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests, Release No. 33–6900 (June 17, 1991) [56 FR 28979 (June 25, 1991)].

[630] Securities Act Industry Guide 6 and Exchange Act Industry Guide 4—Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters. These Industry Guides were first published in 1984 and there have been no significant revisions since their adoption. *See* Rules and Guide for Disclosure Concerning Reserves for Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Underwriters, Release No. 33–6559 (Nov. 27, 1984) [49 FR 47594 (Dec. 6, 1984)].

[631] Securities Act and Exchange Act Industry Guide 7—Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations ("Industry Guide 7"). Industry-specific disclosure requirements for mining companies were previously included in various Securities Act Forms. In 1992, in connection with the Commission's small business initiatives that rescinded Form S–18, Item 17A of Form S–18 was redesignated as Industry Guide 7, so that the industry specific guidance would be applicable to all issuers engaged in mining operations, not only to small business issuers. *See* Small Business Initiatives, Release No. 33–6949 (July 30, 1992) [57 FR 36442 (Aug. 13, 1992)] ("Small Business Initiatives Adopting Release"). A rulemaking petition to amend Industry Guide 7 was submitted to the Commission in October 2012. *See* letter from the Society for Mining, Metallurgy and Exploration, Oct. 1, 2012, *available at http://www.sec.gov/rules/petitions/2012/petn4-654.pdf.*

[632] Guidance contained in Exchange Act Industry Guides 3 and 4 applies to the description of business portion of registration statements filed on Form 10; in proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14C); and in reports filed on Forms 10–K. *See* Item 802 of Regulation S–K [17 CFR 229.802]. Exchange Act Industry Guide 7 does not specify the Exchange Act filings to which the guidance applies.

In proposing to re-designate the Industry Guides, the Commission noted that industry guidelines "maximize" the quality of disclosure in certain industries. Accordingly, though not specifically applicable to Exchange Act filings, Industry Guide 5 may be useful in determining the type of information that might be important in an Exchange Act filing for a real estate program. *See* Proposed Revision of Regulation S–K and Guides for the Preparation and Filing of Registration Statements and Reports, Release No. 33–6276 (Dec. 23, 1980) [46 FR 78 (Jan. 2, 1981)] ("1980 Proposed Revision of Regulation S–K").

1. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. A few commenters recommended general updates to all Industry Guides.[634] One commenter recommended that we consider additional industry-specific disclosure requirements and consider whether changes in the economy require additional industry-specific disclosure in either or both Regulations S–X and S–K.[635] This commenter also stated that the Industry Guides should be updated to reflect changes in disclosure requirements within Regulations S–X and S–K and stated that the Industry Guides, relative to U.S. GAAP and Regulation S–X, could use improvement. One commenter suggested that improved Industry Guides could be helpful in highly-regulated or specialized industries, such as financial institutions and banks, mining, oil and gas exploration, and the pharmaceutical industry.[636] This commenter also suggested moving industry-specific disclosure requirements currently in Regulation S–K to the relevant Industry Guide.[637] One commenter recommended requiring additional disclosure from oil and gas companies about the carbon asset risk to such companies.[638]

2. Discussion

Between 1962 and 1992, the Commission published various Guides and Industry Guides to assist registrants in preparing and filing registration statements and periodic reports and to shorten the comment process.[639] The Guides represented policies and practices followed by the Division and were published in response to an increase in the number of filings reviewed by the Division and an associated increase in the amount of time between the filing and effective dates of a registration statement.[640] The Guides were intended to provide uniformity and enhance comparability of disclosure while reducing the necessity for staff comment on matters addressed in the Guides.[641] The Guides were modified and expanded over time, in part, to address anticipated disclosure issues.[642]

In connection with the adoption of the integrated disclosure system in 1982, the Guides relating to specific industries were re-designated as Industry Guides and the titles of the Securities Act Industry Guides and Exchange Act Industry Guides were listed in Items 801 and 802 of Regulation S–K, respectively.[643]

Although the Industry Guide titles are listed in Items 801 and 802 of Regulation S–K, these guides are not part of Regulation S–K and are not rules, regulations or statements of the Commission.[644]

In 1996, the Task Force on Disclosure Simplification recommended incorporating the Industry Guides into Regulation S–K, based on the Task Force's understanding that registrants find the role of the Industry Guides within our disclosure regime confusing.[645] The Task Force also recommended eliminating Industry Guide 1 (Disclosure of Principal Sources of Electric and Gas Revenues) because the Task Force believed that the information required by the Industry Guide was provided in response to other disclosure requirements.[646]

Although it did not incorporate the Industry Guides into Regulation S–K,[647] the Commission did follow the Task Force's recommendation [648] to eliminate Industry Guide 1 (Disclosure of Principal Sources of Electric and Gas Revenues) because the information requested by the Industry Guide is covered by other Commission rules, including Items 101 and 303 of Regulation S–K.[649] In 2008, the Commission modernized the reporting requirements applicable to oil and gas reserves and codified the disclosure items formerly in Industry Guide 2 by relocating them into Regulation S–K.[650]

The S–K Study recommended reviewing the Industry Guides to evaluate whether they continue to elicit useful information that would not otherwise be disclosed. The S–K Study also recommended considering whether any Industry Guide provisions should be codified in Regulation S–K, whether any information is duplicative of U.S. GAAP requirements and whether industry-specific disclosure requirements should be scaled or transition periods be provided for certain classes of registrants.[651]

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[633] We focus only on the Industry Guides in this section of the release. We do not address items of Regulation S–K that contain industry-specific disclosure requirements, such as Item 104, which requires disclosure about mine safety that is applicable only to registrants that operate coal or other mines. Additionally, this section focuses on the Industry Guides generally and does not pose questions specific to any of the Industry Guides, although we welcome comments on specific revisions to any of the Industry Guides. As part of the Disclosure Effectiveness Initiative, the staff is currently considering recommendations for Industry Guides 3 and 7. Comment letters received specific to Industry Guides 3 and 7 are being considered as part of these staff recommendations.

[634] *See, e.g.,* letters from Rep. Shelley Moore Capito, et al. (July 7, 2014); Senators Dean Heller, Mike Crapo and Jon Tester (Aug. 13, 2014); Shearman.

[635] *See* CFA Institute (listing the technology and social media sectors as examples of industries where industry-specific disclosure may be useful).

[636] *See* Shearman (suggesting that new industry guides could address issues such as the regulatory environments in which industries operate).

[637] *Id.* (citing Item 104—Mine Safety Disclosure as an industry-specific disclosure requirement in Regulation S–K that could be moved to an Industry Guide).

[638] *See* letter from Ceres (Apr. 17, 2015) ("Ceres").

[639] The first Guides were published in 1962. By 1979, there were 63 Guides for the preparation and filing of registration statements and five Guides for the preparation and filing of periodic reports. *See* 1980 Proposed Revision of Regulation S–K (discussing the history of the guides) 1964 Guides; S–K Study at 7, footnote 16, and 10, footnote 28.

[640] *See id.* The backlog of filings and inordinate length of the pre-effective period was attributed in part to the low-quality of first-time filings and inexperience of counsel and accountants. *See* Acceleration of Registration Statements, Release No. 33–4475 (Apr. 13, 1962) [27 FR 3990 (Apr. 26, 1962)]; 1980 Proposed Revision of Regulation S–K.

[641] *See* 1964 Guides ("It is expected that the publication of these policies and practices will not only be of assistance to registrants, their counsel and accountants in the preparation of registration statements, but also that it will relieve the staff of the Commission of the necessity for commenting on these matters in respect of such statements." Id. at 2490); Proposed Guides Concerning Prospectuses Relating to a Public Offering of Interests in Oil and Gas Programs, Release No. 33–5001 (Aug. 27, 1969) [34 FR 14125 (Sept. 6, 1969)] ("The guide is designed to accomplish, to the extent feasible, uniformity in both the sequence of disclosures and their general content. The guide should thus serve to assist issuers in preparing registration statements involving oil and gas drilling programs and to facilitate the understanding and analysis of the program by the investor, enabling him also to compare more readily one offering with another." Id. at 14125).

[642] *See* 1980 Proposed Revision of Regulation S–K (also citing the Commission's investigation of the hot issues securities markets, recommendations of the Industrial Issuers Advisory Committee and recommendations in the Sommer Report as factors to which the expansion and modification of the Guides can be attributed).

[643] *See* Industry Guide Release (rescinding all guides other than those which contain industry-specific disclosure); Items 801 and 802 of Regulation S–K [17 CFR 229.801; 17 CFR 229.802].

[644] *See* Industry Guide Release.

[645] *See* Task Force Report (recommending that the Industry Guides be placed intact at the end of Regulation S–K, in the manner that industry-specific disclosure requirements are currently placed in Regulation S–X). The Task Force also recommended that the Commission consider adopting rules applicable to additional industries and recommended general modernization of the Industry Guides. *Id.*

[646] *See* Task Force Report. The Task Force stated that the disclosure provided by Guide 1 appears to be adequately covered by the requirements of Regulation S–K, primarily Items 101 and 303 of Regulation S–K.

[647] In addressing other Task Force recommendations, the Commission stated that its action for certain Task Force recommendations was not intended to indicate either approval or disapproval of any of the remaining recommendations or suggestions in the Task Force Report. *See* Phase One Recommendations of Task Force on Disclosure Simplification Release.

[648] *See* Task Force Report.

[649] *See* Phase One Recommendations of Task Force on Disclosure Simplification Release.

[650] *See* Oil and Gas Release.

In proposing the re-designation of the Industry Guides, the Commission cited industry guidelines as an example of the limited instances where the use of guidelines is appropriate, stating that guidelines should pertain only to areas such as industry-specific information, where more specific guidance is appropriate yet flexibility is necessary to tailor disclosures to particular facts and circumstances.[652] The Commission cited findings of the Sommer Report in concluding that the use of industry guidelines minimizes the extent to which registrants must comply with inapplicable disclosure requirements, maximizes the quality of the disclosure made for particular industries, and provides Commission staff with a reference for examining filings by particular industries.[653]

We are seeking input on whether the Industry Guides continue to achieve the benefits cited by the Commission when it re-designated the guides in 1980. Today, the Division publicly releases its comment letters.[654] These letters are often analyzed by third parties that publish reports about comment trends in an industry.[655] We believe that registrants look to filings in their industry and recently-issued staff comment letters to anticipate and proactively address industry-specific issues.

We also are seeking public input on the advantages and disadvantages of codifying industry-specific disclosure requirements in Regulation S–K. Codifying the Industry Guides in Regulation S–K would be consistent with the approach taken by the Commission in 2008 when former Industry Guide 2 was codified as Subpart 1200 of Regulation S–K.[656] This approach could help provide consistency in the disclosure provided by registrants in certain industries by making such disclosure a regulatory requirement. A potential disadvantage of this approach, however, is that over time registrants may be required to provide industry-specific disclosure that has become obsolete due to changes in industry practices or technology. Codifying the Industry Guides may afford registrants less flexibility in determining the industry-specific disclosures that are most applicable to them.

Another possible approach is to update but not codify the Industry Guides in Regulation S–K. While this approach may allow registrants the flexibility to omit obsolete disclosures, the fact that the guidance is not a regulatory requirement may result in less uniformity in compliance and therefore less comparability across an industry.

3. Request for Comment

205. Do the Industry Guides result in disclosure that is important to investors that registrants might not otherwise disclose under Regulation S–K or Regulation S–X? If so, what are examples of this type of disclosure?

206. Do registrants find the Industry Guides useful in preparing disclosure for periodic reports?

207. To the extent that the Industry Guides call for information that registrants would not otherwise disclose but for the Industry Guides, what are the challenges of providing this disclosure?

208. Should we include additional industry-specific disclosure requirements in Regulation S–K by codifying all or portions of the Industry Guides? What are the advantages and disadvantages of including industry-specific disclosure requirements in Regulation S–K versus retaining the Industry Guides?

209. Should some or all of the Industry Guides be updated? If so, which ones? Should additional Industry Guides or industry-specific rules for other industries be developed? If so, which industries would benefit from such guidance? Should industry-specific disclosure in Regulation S–K or staff guidance be limited to certain industries? If so, what criteria should be used to identify those industries?

210. What additional costs or costs savings, including the administrative and compliance costs of preparing and disseminating disclosure, do registrants experience because of the Industry Guides? Would registrants' disclosure costs be higher, lower or the same if the disclosures currently detailed in Industry Guides were incorporated into Regulation S–K or Regulation S–X? Please provide quantitative estimates if possible.

211. The Industry Guides originally were intended to assist registrants, their counsel and accountants in the preparation of disclosure by publishing staff policies and practices related to staff review of registrant filings.[657] Does the public release of the staff's comment letters and increased availability of tools that aggregate information about disclosure included in Commission filings and comment letters reduce the need for the Industry Guides as guidance for registrants?

212. Does the status of the Industry Guides as staff policy rather than Commission rules have any impact on the extent to which registrants provide disclosure consistent with the Industry Guides?

213. Regulations S–K and S–X include some industry specific disclosures. For example, Form S–11 [658] and Schedules III and IV prescribed by Articles 12–28 and 12–29 of Regulation S–X, respectively, include industry specific disclosure requirements for certain real estate companies. If we update and codify the Industry Guides in Regulation S–K, should we also move and consolidate other industry-specific disclosure requirements currently located elsewhere to Regulation S–K at the same time? If so, how should we identify those disclosure requirements? Are any of these other industry-specific disclosure requirements already substantially addressed by non-industry-specific required disclosures either in Regulation S–K or by U.S. GAAP?

214. Should industry-specific disclosure requirements apply to every registrant in a particular industry or should they be limited to certain categories of registrants? If they should be limited, to which registrants should they apply?

215. What types of investors or audiences are most likely to value the information that registrants would not disclose but for the Industry Guides?

F. Disclosure of Information Relating to Public Policy and Sustainability Matters

In recent years, Congress has mandated new disclosure requirements that address specific public policy concerns. For example, Section 1502 of the Dodd-Frank Act mandated that the Commission adopt rules regarding registrants' use of "conflict minerals" originating in specified countries, and Section 1504 of the Dodd-Frank Act directed the Commission to adopt rules regarding the disclosure of payments made by resource extraction issuers to foreign governments or the federal government for the purpose of the commercial development of oil, natural gas, or minerals.[659] In addition, Section 1503 of the Dodd-Frank Act requires certain registrants to disclose information about health and safety violations at mining-related facilities.[660]

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[651] *See* S–K Study at 103.

[652] *See* 1980 Proposed Revision of Regulation S–K (stating waiver procedures would be necessary if Industry Guides were codified as formal regulations to address scenarios in which the rule technically applies but where disclosure was neither necessary nor appropriate).

[653] *See id.*

[654] *See* Commission Staff to Begin Publicly Releasing Comment Letters and Responses, May 9, 2005, *available at http://www.sec.gov/news/press/2005-72.htm.*

[655] *See, e.g.,* PricewaterhouseCoopers LLP, *SEC Comment Letter Trends, available at http://www.pwc.com/us/en/cfodirect/publications/sec-comment-letter-trends.html.*

[656] *See* Oil and Gas Release.

[657] *See* 1964 Guides.

[658] 17 CFR 239.18.

Some investors and interest groups also have expressed a desire for greater disclosure of a variety of public policy and sustainability matters, stating that these matters are of increasing significance to voting and investment decisions.[661] For example, some have urged the Commission to adopt disclosure requirements on political spending.[662] The Commission, however, has determined in the past that disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific congressional mandate or unless, under the particular facts and circumstances, such matters are material.[663]

We are interested in receiving feedback on the importance of sustainability and public policy matters to informed investment and voting decisions. In particular, we seek feedback on which, if any, sustainability and public policy disclosures are important to an understanding of a registrant's business and financial condition and whether there are other considerations that make these disclosures important to investment and voting decisions. We also seek feedback on the potential challenges and costs associated with compiling and disclosing this information.

1. Comments Received

S–K Study. None.

Disclosure Effectiveness. We received a number of comment letters on a variety of sustainability and public policy matters, including climate change.[664] Sustainability disclosure encompasses a range of topics, including climate change, resource scarcity, corporate social responsibility, and good corporate citizenship.[665] These topics often are characterized broadly as environmental, social, or governance ("ESG") concerns.[666] Many commenters noted a growing interest in ESG disclosure among investors[667] and many recommended increased sustainability disclosure requirements.[668] Some commenters criticized the primarily voluntary nature of current corporate sustainability reporting and stated their belief that information made available to investors is inconsistent and incomplete.[669] Many commenters also sought disclosure of sustainability related risks, and some of these commenters sought related MD&A and trend disclosure.[670]

One commenter opposed mandatory disclosure of sustainability risks,[671] while another opposed disclosure requirements that it described as addressing "societal issues unrelated to investor protection" in periodic filings.[672] One of these commenters acknowledged the importance of sustainability information to a variety of stakeholders but opined that these issues "are not typically material to an understanding of the company's financial performance" and therefore are not appropriate for inclusion in Exchange Act reports.[673] The other commenter raised similar materiality concerns, stating that "some groups are seeking to use the federal securities laws to address various societal concerns, without giving effect to the bedrock materiality principle."[674]

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[659] 15 U.S.C. 78m(p) and 15 U.S.C. 78m(q)(2)(A). The Commission adopted Exchange Act Rule 13p–1 and Form SD to implement Section 1502 and proposed Rule 13q–1 and an amendment to Form SD to implement Section 1504. Rule 13q–1 was initially adopted by the Commission on August 22, 2012, but it was subsequently vacated by the U.S. District Court for the District of Columbia. *See* Conflict Minerals, Release No. 34–67716 (Aug. 22, 2012) [77 FR 56274 (Sept. 12, 2012)] and Disclosure of Payments by Resource Extraction Issuers, Release No. 34–76620 (Dec. 11, 2015) [80 FR 80057 (Dec. 23, 2015)]. *See* Section III.A.1 for a discussion of the Commission's statutory mandates.

[660] 15 U.S.C. 78m–2. Pursuant to authority granted in Section 1503(d) of the Dodd-Frank Act, the Commission adopted Item 104 of Regulation S–K to implement the statute. *See* Item 104 of Regulation S–K [17 CFR 229.104]. *See also* Mine Safety Disclosure Release.

[661] *See, e.g.,* Ernst & Young LLP, *Tomorrow's Investment Rules 2.0,* 2015 ("Tomorrow's Investment Rules 2015"), at 19, *available at http://www.ey.com/Publication/vwLUAssets/EY-tomorrows-investment-rules-2/$FILE/EY-tomorrows-investment-rules-2.0.pdf* (stating that, in a survey of more than 200 institutional investors around the world, ". . . almost two-thirds of respondents say companies do not adequately disclose information about ESG risks, and nearly 40% call for companies to do so more fully in the future."); Mark Carney, Breaking the Tragedy of the Horizon—Climate Change and Financial Stability, Speech given at Lloyd's of London, Sept. 29, 2015, *available at http://www.bankofengland.co.uk/publications/Pages/speeches/2015/844.aspx* (stating that a new disclosure "framework for firms to publish information about their climate change footprint, and how they manage their risks and prepare (or not) for a 2 degree world, could encourage a virtuous circle of analyst demand and greater use by investors in their decision making"); Gibson Dunn, *Shareholder Proposal Developments During the 2015 Proxy Season,* July 15, 2015 (stating that the most common 2015 shareholder proposal topics, along with the approximate number of proposals submitted were: Political and lobbying activities (110 proposals); proxy access (108 proposals); and independent chair (76 proposals)).

[662] *See Petition for Rulemaking from the Committee on Disclosure of Corporate Political Spending,* Aug. 3, 2011, *available at http://www.sec.gov/rules/petitions/2011/petn4-637.pdf.* The Consolidated Appropriations Act of 2016 prohibits the Commission from using appropriated funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations." Public Law 114–113, Sec. 707, 129 Stat. 2242 (2015) (requirement in Division O, Title VII). This appropriations limitation applies with respect to the Commission's current fiscal year.

[663] *See* Environmental and Social Disclosure, Release No. 33–5627 (Oct. 14, 1975) [40 FR 51656 (Nov. 6, 1975)] ("1975 Environmental Disclosure Release"). In this release, the Commission concluded that, although it is generally not authorized to consider the promotion of social goals unrelated to the objectives of the federal securities laws, it is authorized and required by NEPA to consider promotion of environmental protection as a factor in exercising its rulemaking authority. *See also infra* note 687 and accompanying text.

[664] *See, e.g.,* letters from Union of Concerned Scientists (May 5, 2015) ("UCS"); Ceres; Business Roundtable; Global Reporting Initiative (Apr. 14, 2015) ("GRI"); Carbon Tracker Initiative (Feb. 13, 2015) ("CTI"); Investor Environmental Health Network (Feb. 11, 2015) ("IEHN"); Wallace Global Fund (Dec. 1, 2014) ("Wallace Global Fund"); CFA Institute; SASB; Harrington Investments (Oct. 15, 2014) ("Harrington Investments"); Interfaith Center on Corporate Responsibility (Sept. 24, 2014) ("ICCR"); SCSGP; Sustainability Group (Aug. 12, 2014) ("Sustainability Group"); Corporate Reform Coalition (July 2, 2014) ("Corporate Reform Coalition"); First Affirmative Financial Network (June 26, 2014) ("First Affirmative Financial Network"); US SIF 1; Allianz.

[665] *See,* PricewaterhouseCoopers LLP, *Sustainability goes mainstream: Insights into investor views,* May 2014, *available at https://www.pwc.com/us/en/governance-insights-center/publications/sustainability-goes-mainstream-investor-views.html. See also, e.g.,* World Federation of Exchanges, *Exchange Guidance and Recommendation—October 2015,* Oct. 2015, ("WFE Guidance") *available at http://www.world-exchanges.org/home/index.php/news/world-exchange-news/world-exchanges-agree-enhanced-sustainability-guidance.*

[666] *See, e.g.,* WFE Guidance.

[667] *See, e.g.,* US SIF 1 (citing an increase in assets under management by signatories to the Principles for Responsible Investment and the number of institutional investors urging companies to disclose greenhouse gas goals and plans to reduce emissions); Ceres (noting that a "growing number of investors are working to integrate climate risk into their investment strategies . . . ."); CFA Institute (noting "[a] small, albeit growing, constituency of investors has advocated for the inclusion of sustainability information/disclosures").

[668] *See, e.g.,* UCS; Ceres; GRI; CTI; IEHN; Wallace Global Fund; Harrington Investments; ICCR; Sustainability Group (concerned with underreporting of material information related to environmental liabilities); US SIF 1; First Affirmative Financial Network Group; Allianz.

[669] *See, e.g.,* US SIF 1; Corporate Reform Coalition; letter from Warren G. Lavey, (Nov. 4, 2015).

[670] *See, e.g.,* UCS; Ceres (requesting staff scrutiny of and comment on filings made by oil and gas companies on carbon asset risks, stating such risks constitute "known trends"); CTI (noting that "the relevant 'trend' is how the increasing threat of unmanageable warming will exert pressure to curb emissions from fossil fuel consumption," with potential disclosure impacts throughout MD&A, including capital expenditure plans and reserve valuations, and seeking quantitative disclosures when reasonably available); IEHN (recommending enhanced trend disclosure of emerging scientific literature that is both relevant to a company's products and activities and indicative of potential for substantial health or environmental risks, in addition to disclosure of: (i) Potential long-term impact, (ii) the scope of potential exposure, (iii) measures the company is taking to reduce or mitigate these risks, and (iv) relevant benchmarks of liability); ICCR (supportive of risk related requirements relating to climate change); US SIF 1 (affirming its 2009 recommendation to require annual disclosure on a comprehensive set of sustainability indicators (both universal and industry-specific) and seeking interpretive guidance to clarify that short and long-term sustainability risk disclosure is appropriate in MD&A).

[671] *See* SCSGP (stating that sustainability disclosure can be effectively communicated outside of SEC filings).

We received several comment letters that specifically mentioned climate change disclosure.[675] Many of these commenters expressed concern that disclosures made in response to the Commission's current rules do not adequately address the risks associated with climate change.[676] Some commenters cited specific risks that they believe are not adequately disclosed, such as stranded assets and regulatory risk.[677] Other commenters referenced the Commission's 2010 Interpretive Guidance on Climate Change and stated that registrants are not following that guidance.[678]

A few commenters suggested that we adopt new line-item disclosure requirements for climate change matters.[679] One suggested that we adopt a requirement to disclose anticipated full-cycle costs of future capital expenditures and a requirement to disclose the carbon content of a registrant's reserves and resources.[680] Another suggested that we require oil and gas companies to disclose carbon costs alongside the company's disclosure of proved reserves.[681] A third commenter suggested a rule that requires an annual reporting of the risks to the registrant of the effects of climate change, if any.[682] We also received many letters recommending the Commission adopt a rule requiring disclosure of political spending.[683]

2. Discussion

In 1975, the Commission considered a variety of "environmental and social" disclosure matters, as well as its own authority and responsibilities to require disclosure under the federal securities laws.[684] Following extensive proceedings on these topics, the Commission concluded that it generally is not authorized to consider the promotion of goals unrelated to the objectives of the federal securities laws when promulgating disclosure requirements, although such considerations would be appropriate to further a specific congressional mandate.[685] The Commission also noted that disclosure to serve the needs of limited segments of the investing public, even if otherwise desirable, may be inappropriate, because the cost to registrants, which must ultimately be borne by their shareholders, would likely outweigh the resulting benefits to most investors.[686]

In 1975, the Commission also concluded that it would require disclosure relating to social and environmental performance "only if such information . . . is important to the reasonable investor—material information."[687] While the Commission concluded that its proceedings did not support a specific requirement for all registrants to disclose information describing "corporate social practices," the Commission noted that in specific cases, some information of this type might be necessary in order to make the statements in a filing not misleading or otherwise complete.[688]

The current statutory framework for adopting disclosure requirements remains generally consistent with the framework that the Commission considered in 1975.[689] However, the Commission has recognized that the task of identifying what information is material to an investment and voting decision is a continuing one in the field of securities regulation.[690] The role of sustainability and public policy information in investors' voting and investment decisions may be evolving as some investors are increasingly engaging on certain ESG matters.[691] According to one study, investors are more likely to engage registrants on sustainability issues than on financial results or transactions and corporate strategy.[692] One observer expressed the view that ESG is not only a public policy issue but also a financial issue, noting a positive correlation between a "strong ESG record" and excellence in operations and management.[693] Moreover, this observer specifically noted that regulatory risks posed by climate change are investment issues.[694] Recent studies have also found that asset managers increasingly incorporate or have committed to incorporating ESG considerations into their financial analyses.[695]

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[672] *See* Business Roundtable (suggesting that Commission guidance about when disclosure might be warranted in this area would be more appropriate than expanding the disclosure requirements).

[673] *See* SCSGP (also noting that when these issues are material to a registrant's financial performance, registrants generally provide disclosure under existing Commission requirements).

[674] *See* Business Roundtable.

[675] *See, e.g.,* First Affirmative Financial Network; US SIF 1; ICCR; SASB; Wallace Global Fund; letter from US SIF and US SIF Foundation (Dec. 19, 2014) ("US SIF 2"); CTI; GRI; Ceres; UCS; Allianz.

[676] *See, e.g.,* First Affirmative Financial Network; Wallace Global Fund; Ceres; UCS.

[677] *See, e.g.,* Wallace Global Fund (stating that failure to disclose "stranded assets," which are fossil fuel assets that must stay in the ground because of caps imposed by treaty, law or regulation, may result in a material misrepresentation of a corporation's balance sheet); Ceres (noting an absence of disclosure regarding material risks to the oil and gas industry due to increased capital expenditures on high-cost projects, regulatory risk, and carbon asset risk); UCS.

[678] *See, e.g.,* First Affirmative Financial Network; SASB; US SIF 1.

[679] *See, e.g.,* US SIF 1; CTI; Allianz; UCS.

[680] *See* CTI.

[681] *See* Allianz.

[682] *See* UCS.

[683] *See, e.g.,* Form Letter Type A; UCS; Ceres; Daniel A. Simon, et al. (Apr. 21, 2015); Business Roundtable; GRI; CTI; IEHN; Wallace Global Fund; CFA Institute; SASB; Harrington Investments; ICCR; SCSGP; Sustainability Group; Agenda Project Action Fund; Corporate Reform Coalition; First Affirmative Financial Network; US SIF 1; Allianz.

[684] *See* 1975 Environmental Disclosure Release, *supra,* note 663. The Commission instituted public proceedings in response to a court order that required the Commission to "undertake further rulemaking action to bring the Commission's corporate disclosure regulations into full compliance with the letter and spirit of NEPA" and to "provide a statement of reasons for the denial of the equal employment portion of Plaintiff's Rulemaking Petition." *Id.* at 51657. The order relates to plaintiffs' 1971 rulemaking petition in which the plaintiffs made specific proposals for new disclosure requirements pertaining to the environment and disclosure about the employment of minorities and women. Regarding the equal employment portion of the petition, the plaintiffs sought to require that the Commission require registrants to provide disclosure of statistics on equal employment practices. The court found that the Commission's denial of this portion of the plaintiffs' rulemaking petition failed to comply with the Administrative Procedures Act. *See Natural Resources Defense Council.*

[685] *See id. See also, supra,* note 61. The Commission was ordered to resolve two overriding factual issues as part of the proceeding, "the extent of 'ethical investor' interest in the type of information which Plaintiffs have requested" and "what avenues of action are available which ethical investors may pursue and which will tend to eliminate corporate practices that are inimical to the environment and equal employment opportunity." *See Natural Resources Defense Council* at 701.

[686] *See* 1975 Environmental Disclosure Release at 51666. *See also id.* at note 26 ("If the Commission were required to promulgate rules by plebiscite at the behest of any member of the public, its functions would be purely ministerial, a result clearly not intended by Congress . . .").

[687] *See id.* at 51660. The Commission's conclusions in the 1975 proceedings were endorsed by the Sommer Report. The Sommer Report recommended that the Commission "should require disclosure of matters of social and environmental significance only when the information in question is material to informed investment or corporate suffrage decision-making or required by laws other than the securities laws." *Id.* at 395. The Sommer Report further expressed the view that the Commission should classify social and environmental information as material "only when it reflects significantly on the economic and financial performance of the Company." *Id. at 326–327.* However, the Sommer Report noted that a minority of the Advisory Committee on Corporate Disclosure believed that disclosure of social and environmental information is material to an investment decision regardless of its economic impact on the financial performance of the company. The minority argued that this kind of information reflects on the quality and character of management, which "clearly plays an important role in both investment and corporate suffrage decision-making," and urged the Commission to require increased disclosure in the social and environmental area. *Id.* at 397.

[688] *See id.* at 51656; Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[689] Since 1996, the Commission also has been statutorily required to consider, in addition to the protection of investors, whether an action will promote efficiency, competition, and capital formation. *See* Section 2(b) of the Securities Act [15 U.S.C. 77b(b)]; Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)]. *See also* Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)].

[690] *See* 1980 Proposed Revisions.

In seeking public input on sustainability and public policy disclosures, we recognize that some registrants historically have not considered this information material. Some observers continue to share this view and have expressed concern that sustainability or policy-driven disclosure requirements do not always result in disclosure that a reasonable investor would consider material.[696] Some have expressed concerns that policy-driven disclosure requirements represent a shift away from the Commission's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation, and that such requirements could risk burdening both registrants and investors with costly disclosure that is not material to any investment or voting decision.[697] Similarly, concerns have been expressed that adopting sustainability or policy-driven disclosure requirements may have the goal of altering corporate behavior, rather than producing information that is important to voting and investment decisions.[698] Additionally, one observer has noted numerous attempts to use the Commission's regulatory apparatus to address societal issues.[699] As the costs of compiling and disclosing information about sustainability and public policy issues are borne by the registrant, and ultimately its shareholders, as is all disclosure, we are seeking input on whether these disclosures are important to investors' voting and investment decisions.

3. Request for Comment

216. Are there specific sustainability or public policy issues are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

217. Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?

218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their Web sites.[700] Corporate sustainability reports may also be available in databases aggregating such reports.[701] Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company Web sites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing

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[691] *See* Bill Libit and Todd Freier, *The Corporate Social Responsibility Report and Effective Stakeholder Engagement,* Harvard Law School Forum on Corporate Governance and Financial Regulation, Dec. 28, 2013, *available at https://corpgov.law.harvard.edu/2013/12/28/the-corporate-social-responsibility-report-and-effective-stakeholder-engagement* (discussing increasing stakeholder engagement on ESG issues); Matteo Tonello, *Global Trends in Board-Shareholder Engagement,* Harvard Law School Forum on Corporate Governance and Financial Regulation, Oct. 25, 2013, *available at http://corpgov.law.harvard.edu/2013/10/25/global-trends-in-board-shareholder-engagement* (describing representative shareholder engagement examples that "indicate that much engagement activity involves executive compensation practices, corporate governance structure, and environmental and social issues").

[692] *See* Institutional Shareholder Services for the Investor Responsibility Research Center Institute, *Defining Engagement: An Update on the Evolving Relationship Between Shareholders, Directors and Executives,* Apr. 10, 2014, (stating this trend in engagement "may reflect that investors are satisfied with existing levels of disclosure on financials and strategy, and do not feel a need to engage further; or it may reflect that some of the survey respondents were corporate governance and proxy voting specialists, who are more likely to engage on governance or environmental and social matters than on financial matters."). *See also supra* note 691.

[693] *See* BlackRock Investment Institute, *The Price of Climate Change,* Oct. 2015, at 7, *available at https://www.blackrock.com/corporate/en-us/literature/whitepaper/bii-pricing-climate-risk-us.pdf* (indicating that "ESG factors cannot be divorced from financial analysis. We view a strong ESG record as a mark of operational and management excellence. Companies that score high on ESG measures tend to quickly adapt to changing environmental and social trends, use resources efficiently, have engaged (and, therefore, productive) employees, and face lower risks of regulatory fines or reputational damage.").

[694] *Id.* at 2 (indicating that "[c]limate change risk has arrived as an investment issue. Governments are setting targets to curb greenhouse gas emissions. This may pave the way for policy shifts that we could see ripple across industries. The resulting regulatory risks are becoming key drivers of investment returns.")

[695] *See* US SIF Foundation, *Unlocking ESG Integration,* Sept. 2015, at 7, *available at http://www.ussif.org/files/Publications/UnlockingESGIntegration.pdf,* (stating that inclusion of ESG criteria in the financial analysis of surveyed asset managers increased over three times in terms of U.S.-domiciled assets managed (from about $1.4 trillion to about $4.8 trillion) over a two-year period).

See also, UNEP Finance Initiative, *United Nations Principles for Responsible Investment Report on Progress 2015, available at http://2xjmlj8428u1a2k5o34l1m71.wpengine.netdna-cdn.com/wp-content/uploads/PRI_Report-on-Progress_2015.pdf* (stating that approximately 1,000 financial firms with aggregate assets under management of approximately $59 trillion had signed on to the U.N.'s six Principles for Responsible Investment (PRI) as of 2015. Among other things, the signatories to the PRI committed to incorporate ESG issues into their investment analyses and decision making processes, be active owners around these issues, seek appropriate disclosure on ESG issues by companies in which they invest, and collaborate to promulgate the PRI broadly and enhance implementation, while reporting on their own activities).

[696] *See* David M. Lynn, *The Dodd-Frank Act's Specialized Corporate Disclosure: Using the Securities Laws to Address Public Policy Issues,* 6 J. Bus. & Tech. L. 327 (Spring 2011) ("Lynn"); Business Roundtable; SCSGP.

[697] *See, e.g.,* Business Roundtable; Lynn.

[698] *See generally,* Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency,* 112 Harv. L. Rev. 1197 at 1297 (Apr. 1999) (describing what the author refers to as the "Corporate Management Constraint," which is an argument against requiring social disclosure, particularly social disclosure with the explicit or implicit purpose of changing the way registrants are managed, because the Commission has no authority to do so); Lynn; Business Roundtable.

[699] *See* Matt Levine, *Climate Change and Sovereign Debt,* Bloomberg View (Jan. 25, 2016).

[700] *See, e.g.,* Center for Political Accountability and Zicklin Center for Business Ethics at the Wharton School of the University of Pennsylvania, *The 2015 CPA-Zicklin Index of Corporate Political Disclosure and Accountability,* Oct. 8, 2015 at 8, *available at http://files.politicalaccountability.net/index/CPA-Zicklin_Index_Final_with_links.pdf;* KPMG LLP, *Currents of Change: The KPMG Survey of Corporate Responsibility Reporting 2015,* Nov. 24, 2015 ("2015 KPMG"), *available at https://assets.kpmg.com/content/dam/kpmg/pdf/2016/02/kpmg-international-survey-of-corporate-responsibility-reporting-2015.pdf;* Governance & Accountability Institute, *Sustainability—what matters?,* 2014, *available at http://www.ga-institute.com/fileadmin/user_upload/Reports/G_A_sustainability_-_what_matters_-FULL_REPORT.pdf.*

[701] *See, e.g.,* CorporateRegister.com for a database of corporate responsibility reports from over 900 companies in the United States and about 8,100 companies internationally, *available at http://www.corporateregister.com;* Sustainability Disclosure Database of the Global Reporting Initiative *available at http://database.globalreporting.org.*

such disclosure on their Web sites? How important to investors is integrated reporting,[702] as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their Web sites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?

219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks.[703] Currently, some registrants use these frameworks and provide voluntary ESG disclosures.[704] If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?

220. Are there sustainability or public policy issues for which line-item disclosure requirements would be consistent with the Commission's rulemaking authority and our mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation, as described in Section III.A.1 of this release? If so, how could we address the evolving nature of such issues and keep our disclosure requirements current?

221. What, if any, challenges would registrants face in preparing and providing this information? What would be the additional costs of complying with sustainability or public policy line-item disclosure requirements, including the administrative and compliance costs of preparing and disseminating disclosures, beyond the costs associated with current levels of disclosure? Please quantify costs and expected changes in costs where possible.

222. If we propose line-item disclosure requirements that require disclosure about sustainability or public policy issues, should we scale the disclosure requirements for SRCs or some other category of registrant? Similarly, should we exempt SRCs or some other category of issuer from any such requirements?

223. In 2010, the Commission published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. As part of the Disclosure Effectiveness Initiative, we received a number of comment letters suggesting that current climate change-related disclosures are insufficient. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why or why not? If not, what additional disclosure requirements or guidance would be appropriate to elicit that information?

G. Exhibits

Exhibits to Commission filings provide detailed information about the registrant that generally is not available in the form itself. Item 601 of Regulation S–K specifies, by form type, the exhibits that registrants must file with Securities Act and Exchange Act forms. The exhibit requirements for Exchange Act forms overlap with many—but not all—of the exhibit requirements for Securities Act forms. Similarly, although there are some differences between the exhibit requirements for Forms 8–K, 10–Q and 10–K, many of the required exhibits are the same. Exhibits required in Exchange Act reports cover such categories as certain transactions,[705] corporate organization and governance,[706] rights of securities holders,[707] matters relating to the financial statements (including certifications),[708] and material contracts.[709]

The requirement to file exhibits originated in Schedule A of the Securities Act, which requires registrants to file copies of certain agreements, opinions and governing instruments.[710] Over time, the Commission has adopted additional requirements for exhibits as part of different forms under the Securities Act and the Exchange Act.[711] In 1980, the Commission standardized and centralized the exhibit requirements by moving them from individual forms to Item 601 in Regulation S–K.[712] The exhibit requirements adopted in 1980 remain substantially the same today.[713] In 2003, however, the Commission adopted additional exhibit requirements mandated by the Sarbanes-Oxley Act.[714]

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[702] *See* International Integrated Reporting Council, *The International IR Framework*, Dec. 2013, *available at http://integratedreporting.org/wp-content/uploads/2015/03/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf*; Robert G. Eccles and George Serafeim, *Corporate and Integrated Reporting: A Functional Perspective* (Harvard Business School, Working Paper 14–094 May 5, 2014).

[703] *See* WFE Guidance at 8 (describing sustainability reporting frameworks established by CDP (formerly, the Carbon Disclosure Project), Global Reporting Initiative, the International Integrated Reporting Council, SASB, and the United Nations Global Compact).

[704] For example, according to an industry study, about seventy percent of corporate responsibility reporting in the Americas uses the Global Reporting Initiative reporting framework. *See* 2015 KPMG at 42.

[705] *E.g.*, Item 601(b)(2) of Regulation S–K (plan of acquisition, reorganization, arrangement, liquidation or succession) [17 CFR 229.601(b)(2)].

[706] *E.g.*, Items 601(b)(3)(i)–(ii) (articles of incorporation, bylaws); (b)(14) (code of ethics); (b)(20) (documents or statements to security holders); (b)(21) (subsidiaries of the registrant); (b)(22) (published report regarding matters submitted to vote of security holders); (b)(24) (power of attorney); (b)(31) (Exchange Act Rule 13a–14(a)/15d–14(a) certifications) and (b)(32) (Exchange Act Section 1350 certifications) of Regulation S–K [17 CFR 229.601(b)(3)(i)–(ii), (b)(14), (b)(20), (b)(21), (b)(22), (b)(24), (b)(31) and (b)(32)].

[707] *E.g.*, Items 601(b)(4) (instruments defining the rights of security holders) and (b)(9) (voting trust agreement) of Regulation S–K [17 CFR 229.601(b)(4) and (9)].

[708] *E.g.*, Items 601(b)(15) (letter re unaudited interim financial information); (b)(16) (change in certifying accountant); (b)(18) (change in accounting principles); (b)(31) (Exchange Act Rule 13a–14(a)/15d–14(a) certifications) and (b)(32) (Exchange Act Section 1350 certifications) of Regulation S–K [17 CFR 229.601(b)(15), (b)(16), (b)(18), (b)(31) and (b)(32)].

[709] Item 601(b)(10) (material contracts) of Regulation S–K [17 CFR 229.601(b)(10)].

[710] *See* Securities Act of 1933 Schedule A Paragraphs (28) through (32) [15 U.S.C. 77aa(28)–(32)], which require registrants to file underwriting agreements, opinions of counsel regarding the legality of the offering, material contracts, governing instruments (such as articles of incorporation, bylaws and partnership agreements) and agreements or indentures affecting the offered securities.

[711] For instance, in 1971, the Commission adopted a new exhibit requirement for a report on a material change in accounting principles or practices accompanied by a letter from the independent accountant approving or otherwise commenting on such changes. *See* Section IV.G.6. Similarly, in 1977, the Commission began requiring companies to file as exhibits copies of every contract specifically referred to in the company's discussion of its reportable industry segments. *See infra* note 754 and accompanying text.

[712] *See* Amendments Regarding Exhibit Requirements, Release No. 33–6230 (Aug. 27, 1980) [45 FR 58822 (Sept. 5, 1980)] ("1980 Exhibits Adopting Release"). Prior to 1980, exhibit requirements were included in each registration statement form or periodic report form and many requirements were inconsistent from form to form. The changes were intended to simplify and codify the exhibit requirements.

[713] With the adoption of the integrated disclosure system in 1982, the Commission made technical changes to the exhibit requirements and re-designated the requirements from Item 7 to Item 601. *See* 1982 Integrated Disclosure Adopting Release.

[714] *See, e.g.*, Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reporting, Release No. 33–8238 (June 5, 2003) [68 FR 36636 (June 18, 2003)] (adopting Items 601(b)(31) and (b)(32) requiring companies to file the certifications mandated by Sections 302 and 906 respectively of the Sarbanes-Oxley Act as exhibits to certain periodic reports); Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Release No. 33–8177 (Jan. 23, 2003) [68 FR 5110

Continued

In 2009, the Commission adopted rules to require filing of interactive data-tagged financial statements as part of its 21st Century Disclosure Initiative.[715] More recently, the Commission adopted additional exhibit requirements mandated by the Dodd-Frank Act.[716]

To the extent that exhibits contain confidential and proprietary information, Commission rules permit registrants to omit this information from their public filings. For Exchange Act filings, registrants may obtain confidential treatment of information under Rule 24b–2. This rule requires registrants seeking confidential treatment to submit an application to the Commission objecting to disclosure of such information along with an analysis of the applicable exemption under FOIA.[717] Most applicants rely on the exemption that covers trade secrets and commercial or financial information obtained from a person and privileged or confidential.[718] If the Commission grants the application, the registrant may omit the information from its public filings for a limited period of time identified in the application.[719]

We are seeking input on Item 601 of Regulation S–K to determine whether its requirements continue to provide investors with information important to making informed investment and voting decisions. Consistent with the scope of this release, we are considering only those exhibits required in quarterly and annual reports filed under the Exchange Act, which are identified in the following table.[720] While we do not specifically address each exhibit in our discussion, we welcome comments on any of the items listed below.[721]

	Forms		
	8–K[722]	10–Q	10–K
(1) Underwriting agreement	X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X
(3)(i) Articles of incorporation	X	X	X
(ii) Bylaws	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	X		
(9) Voting trust agreement			X
(10) Material contracts		X	X
(11) Statement re computation of per share earnings		X	X
(12) Statements re computation of ratios			X
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders			X
(14) Code of Ethics	X		X
(15) Letter re unaudited interim financial information		X	
(16) Letter re change in certifying accountant	X		X
(17) Correspondence on departure of director	X		
(18) Letter re change in accounting principles		X	X
(19) Report furnished to security holders		X	
(20) Other documents or statements to security holders	X		
(21) Subsidiaries of the registrant			X
(22) Published report regarding matters submitted to vote of security holders		X	X
(23) Consents of experts and counsel	X	X	X
(24) Power of attorney	X	X	X
(31)(i) Rule 13a–14(a)/15d–14(a) Certifications		X	X
(ii) Rule 13a–14/15d–14 Certifications			X
(32) Section 1350 Certifications		X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers			X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities			X
(35) Servicer compliance statement			X
(95) Mine Safety Disclosure Exhibit		X	X
(99) Additional exhibits	X	X	X
(100) XBRL-Related Documents	X	X	X
(101) Interactive Data File	X	X	X

(Mar. 31, 2003)] ("Audit Committee Financial Expert and Code of Ethics Adopting Release") (adopting Item 601(b)(14), which requires companies to file a copy of any code of ethics that applies to the company's CEO, CFO and senior accounting personnel with their annual reports, as mandated by Section 406 of the Sarbanes-Oxley Act).

[715] *See supra* note 41.

[716] *See, e.g.*, Mine Safety Disclosure Release (adopting Item 601(b)(95) requiring companies that operate coal or other mines to provide information about mine safety required by Item 104 in an exhibit).

[717] Exchange Act Rule 24b–2 [17 CFR 240.24b–2]. The rule requires an application containing: An identification of the confidential portion; a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Commission's rules and regulations adopted under FOIA, and a justification of the period of time for which confidential treatment is sought; a written consent to the furnishing of the confidential portion to other government agencies, offices or bodies and to the Congress; and the name of each exchange, if any, with which the material is filed. *Id.*

[718] *See* FOIA Section 552(b)(4) [5 U.S.C. 552(b)(4)] and Staff Legal Bulletin 1A.

[719] Exchange Act Rule 24b–2(b)(2)(ii) [240.24b–2(b)(2)(ii)]. In interpreting Rule 24b–2, the staff has indicated that the time period for confidential treatment generally will be limited to the duration of the contract, but no more than ten years. *See* Staff Legal Bulletin 1A.

[720] Many of the exhibits addressed in quarterly and annual reports are also required in current reports on Form 8–K. Though not within the scope of this release, the table includes exhibits required in current reports on Form 8–K to provide additional context.

[721] As part of its work to develop recommendations for the Commission for potential changes to update or simplify certain disclosure requirements, the staff is separately considering paragraphs (b)(11), (b)(12), (b)(19), (b)(22) and (b)(26) of Item 601. The staff is also separately considering recommendations to aspects of Item 601(b)(25)(ii) and 601(a)(2) as part of this effort. For a description of this project, *see* Section I.

[722] A Form 8–K exhibit is required only if it is relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of Item 601 must be filed.

1. Request for Comment

224. Should we modify or eliminate any of the exhibit requirements in Item 601? If so, which ones and why? Should we add any new exhibit requirements to Item 601? If so, what requirements should we add and why?

225. Should we revise any of our exhibit requirements to change the presentation or format of the exhibits?

226. Should the Commission consider changes to improve the usefulness of the exhibits? For example, should the exhibits be provided in a tagged or searchable manner?

227. What types of investors or audiences are most likely to value the information that registrants disclose in the exhibits?

228. What is the cost of providing the disclosure required under Item 601, including administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates if possible and include only those costs associated with Item 601.

2. Schedules and Attachments to Exhibits

In response to Item 601, registrants generally must file exhibits as complete documents, including any schedules or attachments. These schedules and attachments can be lengthy and sometimes contain proprietary information. The only exception to the requirement to file schedules and attachments applies to a plan of acquisition, reorganization, arrangement, liquidation or succession filed under Item 601(b)(2).[723] The rule provides that schedules or similar attachments to these exhibits shall not be filed unless they contain information which is material to an investment decision and has not been disclosed otherwise.[724]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter suggested adding a new instruction to Item 601 permitting the omission of schedules to all exhibits required to be filed, unless such schedules contain material information that is not otherwise disclosed in the exhibit or in the filing, as is the case with current Item 601(b)(2).[725] Alternatively, this commenter suggested that we revise Item 601 to permit companies to omit personally identifiable and similar information, such as bank account numbers and home addresses, without having to apply for confidential treatment to protect the information.[726]

b. Discussion

The Commission first permitted registrants to omit schedules and attachments for Item 601(b)(2) exhibits in 1980.[727] In revising the exhibit requirement, the Commission stated that many of the schedules received by the staff pursuant to the exhibit requirement were not material for investor information or protection and were unnecessary for Commission review purposes.[728]

Material contracts filed under Item 601(b)(10) often include schedules that contain information that is not material to investors or that has been disclosed or sufficiently described elsewhere in the exhibit or in the disclosure. Examples of schedules and attachments providing information that may be immaterial include detailed product specifications attached to royalty agreements; implementation plans attached to service agreements; premises descriptions and plots as schedules to real estate leases; and licensing agreements with schedules listing immaterial patents. To the extent these schedules contain confidential and proprietary information, registrants may be permitted to omit such information from the public filing.[729]

c. Request for Comment

229. Should we continue to allow registrants to omit schedules and attachments for exhibits filed under Item 601(b)(2)? Why? If so, what qualitative or quantitative factors should be considered when determining if omission is appropriate?

230. Should we allow registrants to omit immaterial schedules and attachments from their filed exhibits? If so, should we expand this approach to all exhibits, or should we limit it to material contracts filed under Item 601(b)(10)? Should we provide examples or other guidance on how registrants could evaluate materiality for purposes of including schedules and attachments? If so, what type of guidance would be most useful for assessing the importance of the information (*e.g.*, quantitative thresholds, qualitative factors)? What would be the potential benefits and challenges associated with such an approach? If registrants omit schedules and attachments based on immateriality, should we require registrants to disclose how they assessed materiality for these purposes?

231. If we allow the omission of immaterial schedules and attachments from all or certain filed exhibits, should we require registrants to include with such exhibits a list briefly identifying the contents of all omitted schedules, together with an agreement to provide a supplemental copy of any omitted schedule to the Commission upon request, similar to the requirement in Item 601(b)(2)?

232. Schedules and attachments to exhibits sometimes contain personally identifiable information ("PII"), and registrants may request confidential treatment of that information. Division staff generally does not object to the omission of PII from exhibits without a formal confidential treatment request, provided the registrant does not omit any other information from its exhibits. If we retain the requirement for registrants to file schedules and attachments to exhibits, should we codify current staff practice and permit registrants to omit PII without making a formal request under Rule 24b–2 of the Exchange Act? Should we limit such an accommodation to information contained in schedules and attachments to exhibits, or should we expand it to all exhibit filings?

3. Amendments to Exhibits

Any amendment or modification to a previously filed exhibit to a Form 10–K or Form 10–Q must be filed as an exhibit to a Form 10–K or Form 10–Q.[730] Registrants generally must file such amendments or modifications regardless of the significance of the change.[731] As a result, registrants may be required to file a significant number of amendments that are not necessarily material to investors. However, registrants are not required to file amendments or modifications when the previously filed exhibit would not currently be required.[732]

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[723] *See* Item 601(b)(2) of Regulation S–K [17 CFR 229.601(b)(2)].

[724] *Id.* The exhibit filed must include a list briefly identifying the contents of all omitted schedules along with an agreement to provide a supplemental copy of any omitted schedules to the Commission upon request. *Id.*

[725] *See* ABA 2.

[726] *Id.*

[727] *See* 1980 Exhibits Adopting Release.

[728] *See id.*

[729] *See supra* notes 717, 718 and 719 and accompanying text.

[730] Item 601(a)(4) of Regulation S–K [17 CFR 229.601(a)(4)].

[731] For a discussion of changes to exhibits and Instruction 1 to Item 601, *see* Section IV.G.4.

[732] For example, a previously filed exhibit may no longer be material to a registrant as a result of the registrant's growth or change in business focus. The Commission revised Item 601 in 1982 to clarify that amendments and modifications must be filed only

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For amendments to articles of incorporation or bylaws, Item 601 requires registrants to file a complete copy of the document as amended.[733] Item 601 does not include a similar requirement for other exhibits, and registrants typically file amendments to these exhibits without filing a complete, amended and restated version of the agreement.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter suggested revising Item 601(a)(4) to exclude amendments to material contracts that do not affect the economics of such contracts (*e.g.,* technical amendments) from the requirement to file any amendment or modification to a previously filed exhibit.[734]

b. Discussion

With adoption of the integrated disclosure system, the Commission consolidated several requirements in Forms 10–Q and 10–K for amendments and modifications to previously filed exhibits.[735] The new item required registrants to file as exhibits all amendments or modifications to exhibits that were previously filed with those forms.[736] The requirement was moved to paragraph (a)(4) of Item 601 in 1993 and has remained unchanged since.[737]

Registrants frequently amend agreements, such as credit facilities, licensing agreements, manufacturing agreements and supply agreements, to extend their duration. Registrants also amend credit facilities to increase the amount available for borrowing. Other than amended articles of incorporation or bylaws, multiple amendments to the same agreement may be dispersed among different periodic reports.

c. Request for Comment

233. Should we continue to require registrants to file all amendments or modifications to previously filed exhibits as required under Item 601(a)(4)? Should we instead amend Item 601(a)(4) to exclude immaterial amendments? If so, should we provide guidance to registrants about how to determine whether an amendment is immaterial? Instead of materiality, should we permit registrants to exclude amendments based on a different standard? If so, what standard would be appropriate?

234. Does an amendment-only exhibit provide investors with the information they need to evaluate the impact of the amendment on the registrant? Should we instead require registrants to file a complete, amended and restated agreement each time an exhibit is modified, consistent with the requirement for amendments to articles of incorporation and bylaws? If so, should we require registrants to identify changes in the amended and restated contracts such as by underlining or highlighting the changes? Would complying with such a requirement be more burdensome for agreements than for articles of incorporation or bylaws? If so, why?

4. Changes to Exhibits (Instruction 1 to Item 601)

If an exhibit to a registration statement is filed in preliminary form, Instruction 1 to Item 601 provides that registrants are not required to file an amendment to the exhibit if it has been changed only (1) to insert certain information that appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Securities Act Rule 424(b), or (2) to correct typographical errors, insert signatures or make other similar immaterial changes.[738] No similar provision exists for exhibits to Exchange Act reports. Instruction 1 also provides that any such incomplete exhibit may not be incorporated by reference in any subsequent filing under any Act administered by the Commission.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended eliminating the last sentence of Instruction 1 to Item 601, which states that incomplete exhibits already on file that do not reflect the modifications described in the instruction may not be incorporated by reference in any subsequent filing.[739]

b. Discussion

The Commission adopted the predecessor to Instruction 1 of Item 601 in 1954 in connection with new rules designed to simplify the registration procedure for offers involving competitive bidding.[740] Those rules provided that, if certain conditions were met, post-effective amendments reflecting the results of the bidding would become effective without the need for a Commission order.[741] This provision was intended to avoid the delay and attendant uncertainty that occurred between the filing and effectiveness of post-effective amendments.[742] Consistent with this goal, the Commission eliminated a requirement for registrants to refile exhibits solely to insert interest rate, redemption prices and certain other offering-related information.[743] The Commission retained this provision as Instruction 1 to Item 601.[744]

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for currently required exhibits as opposed to previously filed exhibits that are no longer material and required to be filed. *See* 1982 Integrated Disclosure Adopting Release.

[733] Item 601(b)(3) of Regulation S–K [17 CFR 229.601(b)(3)]. If such amendment is being reported on Form 8–K, however, the registrant is required to file only the text of the amendment as a Form 8–K exhibit. In such case, a complete copy of the articles of incorporation or bylaws as amended must be filed as an exhibit to the next Securities Act registration statement or periodic report filed by the registrant to which this exhibit requirement applies. *Id.*

[734] *See* ABA 2.

[735] *See* 1980 Exhibits Adopting Release. For example, prior to 1980, Form 10–K required registrants to file copies of all amendments or modifications, not previously filed, to all exhibits previously filed, or copies of such exhibits as amended or modified. *See, e.g.,* 1965 Amendments to Form 10–K Adopting Release.

[736] *Id.*

[737] *See* Rulemaking for EDGAR System, Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)] at note 388.

[738] Instruction 1 to Item 601 of Regulation S–K [17 CFR 229.601]. The instruction states that if an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act (230.424(b) of this chapter), or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission. *Id.*

[739] *See* ABA 2.

[740] *See* Adoption of Rule 415 Relating to Competitive Bidding Registration Statements, Amendment of Rules 424, 427, 455, 471 and 472 and Rescission of Rule 460, Release No. 33–3494 (Jan. 13, 1954) [*not published in the **Federal Register***] ("1954 Adopting Release").

[741] *See id.* At the time, registrants engaged in offerings involving competitive bidding were required to file post-effective amendments to registration statements at the time the bids were opened to reflect the results of the bidding. These post-effective amendments were only effective pursuant to an order from the Commission.

[742] *See* Notice of Proposal to Adopt Rule 415 Relating to Competitive Bidding Registration Statements, To Amend Rules 424, 427, 455, 471 and 472 and to Rescind Rule 460, Release No. 33–3491–Z (Nov. 10, 1953) [*not published in the **Federal Register***].

[743] *See* 1954 Adopting Release.

[744] *See* 1982 Integrated Disclosure Adopting Release. *See also* Proposed Rescission of Guides for the Preparation and Filing of Registration Statements and Reports, Release No. 33–6332 (Aug. 6, 1981) [46 FR 41925 (Aug. 18, 1981)] ("Proposed Revision of Regulation S–K (1981)") (proposing to incorporate the predecessor to Instruction 1 into the

While Instruction 1 is intended to address timing concerns in certain registered offerings, it also affects registrants' ability to incorporate exhibits by reference to other filings. To the extent a registrant modifies an incomplete exhibit that was filed in preliminary form, as permitted under Instruction 1, the incomplete exhibit already on file may not be incorporated by reference into its Exchange Act reports. Instead, the registrant would be required to file the complete exhibit with an Exchange Act report for the relevant reporting period.

c. Request for Comment

235. Should we eliminate Instruction 1?

236. Should we expand the applicability of Instruction 1 to all filings? Should we expand the type of information in clauses (A) and (B) of Instruction 1 to cover additional types of information that, if changed, do not need to be refiled as an amendment to the exhibit?

237. Instruction 1 states that any incomplete exhibit may not be incorporated by reference in any subsequent filing.[745] Should we eliminate this limitation?

5. Material Contracts (Item 601(b)(10))

Item 601(b)(10) of Regulation S–K requires registrants to file material contracts that fall into one of three broad categories:

- All contracts not made in the ordinary course of business that are material to the registrant (Item 601(b)(10)(i));
- Contracts made in the ordinary course of business of a type that are specified in the rule (Item 601(b)(10)(ii)); and
- Management contracts and compensatory plans in which any director, named executive officer, or other executive officer of the registrant participates (Item 601(b)(10)(iii)).[746]

Any material contract that is executed or becomes effective during a reporting period must be filed as an exhibit to the Forms 10–Q or 10–K for the corresponding period.[747]

a. Contracts Not Made in the Ordinary Course—Item 601(b)(10)(i)

Item 601(b)(10)(i) requires registrants to file every contract not made in the ordinary course of business that is material to the registrant and is to be performed in whole or in part at or after the filing of the report, or was entered into not more than two years before such filing.[748] Registrants are required to file only those contracts to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

i. Comments Received

S–K Study. Two commenters stated that the agreements required to be filed pursuant to Item 601(b)(10)(i) often contain confidential information.[749] These commenters also stated that the process of filing the agreements and obtaining confidential treatment is burdensome on registrants and provides information of limited value to investors.[750]

Disclosure Effectiveness Initiative. None.

ii. Discussion

In 1964, Congress expanded the information requirements for registration statements filed under Section 12 of the Exchange Act by adding a requirement to include material contracts not made in the ordinary course of business.[751] Following these Exchange Act amendments, the Commission revised Form 10–K to make the form available for annual reports of all Exchange Act registrants and expanded the form's disclosure requirements.[752] Among other changes, these amendments included a requirement in Form 10–K to file material contracts not made in the ordinary course of business, not previously filed and performed or to be performed at or after the beginning of the fiscal year covered by the report.[753] This requirement was similar to the new requirement to file such exhibits with Exchange Act registration statements which, however, required this information for two years prior to filing of the registration statement.

In 1977, with the adoption of Regulation S–K, the Commission expanded the exhibit requirements for contracts not made in the ordinary course of business to include those that were material to an understanding of the registrant's overall business or specifically referred to in the registrant's discussion of its reportable industry segments.[754] In 1980, the Commission eliminated the latter requirement,[755] noting that many contracts referred to in the disclosure may not be material to the registrant.[756] With this revision, the Commission sought to reduce the number of contracts required to be filed without impairing investor information or protection.[757] In 1982, the Commission adopted the current requirements described in Items 601(b)(10)(i) and (ii) with the adoption of the integrated disclosure system.[758]

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instructions to Item 601) and 1981 Proposed Revisions (proposing to delete Rule 472(d), which addressed immaterial changes in exhibits, because its substance was proposed to be included in Item 601). In connection with the adoption of Rule 430A, the Commission amended Instruction 1 to include a reference to prospectus supplements under Rule 424. *See* Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures, Release No. 33–6714 (May 27, 1987) [52 FR 21252 (June 5, 1987)].

[745] For a discussion of incorporation by reference, *see* Section V.B.

[746] As this release is focused on our business and financial disclosure requirements, we are not addressing Item 601(b)(10)(iii) of Regulation S–K [17 CFR 229.601(b)(10)(iii)].

[747] Item 601(a)(4) of Regulation S–K [17 CFR 229.601(a)(4) and Instruction 2 to Item 601(b)(10) of Regulation S–K [17 CFR 229.601(b)(10)].

[748] Item 601(b)(10)(i) of Regulation S–K [17 CFR 229.601(b)(10)(i)]. This requirement is virtually identical to paragraph 24 of Schedule A of the Securities Act. [15 U.S.C. 77aa(24)].

[749] *See* Silicon Valley; M. Liles.

[750] *Id.*

[751] *See* Summary and Interpretation of Amendments to Securities Act of 1933 and Securities Exchange Act of 1934 Contained in the Securities Acts Amendments of 1964, Release No. 34–7425 (Sept. 15, 1964) [29 FR 13455 (Sept. 30, 1964)].

As amended, Section 12(b) required registrants to file material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the Exchange Act registration statement or which were made not more than two years before such filing. Schedule A includes a similar requirement for Securities Act registration statements. [15 U.S.C. 77aa(24)]. As noted at the time, the amendment to Section 12(b) followed the Commission's recommendation that registration under both the Exchange Act and the Securities Act be made as similar as possible. *See* Lee J. Sclar, *The Securities Acts Amendments of 1964: Selected Provisions and Legislative Deficiencies,* 53 Cal. L. Rev. 1494, 1515 (1965).

The two-year requirement was intended as a "cutoff period" so registrants would not have to file all material contracts executed as early as 1932, even though they may have been fully performed years ago. *See* H.R Rep. No. 88–1418, 83rd Cong., 2nd Sess., 1964. *See also* Richard M. Phillips and Morgan Shipman, An Analysis of the Securities Acts Amendments of 1964, 1964 Duke L.J. 706, 788–789 (1964).

[752] *See* 1965 Amendments to Form 10–K Adopting Release.

[753] *Id.* Similar to the language in amended Section 12(b) of the Exchange Act, the new requirement called for "[c]opies of every material contract not made in the ordinary course of business and not previously filed which was performed or to be performed in whole or in part at or after the beginning of the fiscal year covered by the report on this form." *Id.* at 3433. The Commission adopted additional exhibit requirements with these amendments, which we discuss below in Section IV.G.5.b.

[754] *See* 1977 Regulation S–K Adopting Release.

[755] *See* 1980 Exhibits Adopting Release.

[756] *See* Proposed Amendments Regarding Exhibit Requirements, Release No. 33–6149 (Nov. 16, 1979) [44 FR 67143 (Nov. 23, 1979)] ("Proposed Amendments Regarding Exhibit Requirements Release").

[757] *See* 1980 Exhibits Adopting Release. *See also* Proposed Amendments Regarding Exhibit Requirements Release.

[758] *See* 1982 Integrated Disclosure Adopting Release. *See also* Proposed Revision of Regulation

Continued

In 2004, the Commission adopted Items 1.01 and 1.02 of Form 8–K, which require disclosure when a registrant enters into, amends or terminates an agreement that is material to the registrant and is not made in the ordinary course of business.[759] In the proposing release, the Commission sought comment on whether it should use a disclosure threshold that is tied to a financial measure, rather than materiality.[760] The Commission ultimately adopted the reporting requirements with a materiality threshold because the standard was "already familiar to reporting companies," noting that the materiality threshold parallels the materiality threshold for filing this type of agreement under Item 601(b)(10) of Regulation S–K.[761]

iii. Request for Comment

238. Item 601(b)(10)(i) does not include any guidance for determining whether a contract not made in the ordinary course of business is material to a registrant. Should we consider revising the requirement to provide quantitative or other thresholds for determining when a contract is material to the registrant? If so, how should we define these thresholds? Would such a change facilitate registrants' compliance with this item requirement? Would such a change result in disclosure that is useful to investors?

239. Does "not made in the ordinary course of business" provide a clear standard for agreements covered by the rule? Should a different standard to apply? Should we revise Item 601(b)(10)(i) to define the types of contracts not made in the ordinary course of business that companies are required to file as exhibits? If so, how should we define such contracts?

240. Item 601(b)(10)(i) requires registrants to file material contracts that either (i) are to be performed in whole or in part at or after the filing of the periodic report, or (ii) were entered into not more than two years before such filing. This requirement was enacted in the context of requiring material contracts for newly reporting registrants that were entered into within the last two years but may have been fully performed before the period covered by the report. Do such contracts continue to be important to investors? Should we limit subparagraph (ii) to newly reporting registrants? For registrants that are already subject to reporting requirements, should we eliminate subparagraph (ii) and require registrants to file only material contracts that are to be performed in whole or in part at or after the filing of the report? Should we revise Item 601(b)(10)(i) to require all material agreements to be filed regardless of when they were entered into, as long as such agreements remain material to the registrant? Under what circumstances could a contract remain material to a registrant if it has been fully performed in a prior period?

b. Certain Contracts Made in the Ordinary Course—Item 601(b)(10)(ii)

Contracts made in the ordinary course of business conducted by a registrant and its subsidiaries generally do not need to be filed. Item 601(b)(10)(ii), however, establishes specific exceptions to the general rule and requires certain contracts to be filed even when they ordinarily accompany the kind of business conducted by the registrant and its subsidiaries. The following types of contracts must be filed, except where immaterial in amount or significance:

- Any contract to which directors, officers, voting trustees, security holders named in the registration statement or report, or underwriters are parties, other than contracts involving only the purchase or sale of current assets that have a determinable market price, at such market price;[762]
- Any contract upon which the registrant's business is substantially dependent, such as continuing contracts to sell the major part of the registrant's products or services or to purchase the major part of the registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the registrant's business depends to a material extent;[763]
- Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding fifteen percent of such fixed assets of the registrant on a consolidated basis;[764] or
- Any material lease under which a part of the property described in the filing is held by the registrant.[765]

i. Comments Received

S–K Study. We received letters from two commenters addressing the requirement in Item 601(b)(10)(ii)(B) to file any contract upon which the registrant's business is substantially dependent, as in the case of a continuing contract to sell the major part of a registrant's products or services or to purchase the major part of a registrant's requirements for goods, services or raw materials. Both commenters requested guidance interpreting the phrase "the major part" to mean agreements involving a majority of the products or services sold or purchased.[766] Both commenters also noted that the filing threshold for agreements that are "immaterial in amount or significance" as it relates to Item 601(b)(10)(ii)(A) leads to a disproportionate burden on EGCs, which frequently enter into agreements with parties that have a five percent or greater ownership of the registrant.[767] These commenters suggested that other disclosure provisions require the filing or disclosure of "relevant information" regarding these related party agreements.[768]

Disclosure Effectiveness Initiative. One commenter noted that the reference in Item 601(b)(10)(ii)(B) to contracts to sell the major part of a registrant's products or services is tied neither to a specific quantitative threshold nor to materiality.[769] This commenter recommended that the Commission undertake a study to harmonize various qualitative disclosure thresholds in Regulation S–K, such as "major part" in Item 601(b)(10)(ii)(B) and "major significance" in Item 102, to reduce the ambiguity in their application. This commenter also suggested revising Item 601(b)(10)(ii) so that contracts with certain insiders or other parties identified in the item need not be filed if they contain terms no less favorable to the registrant than terms that could have been obtained from unrelated third parties. Another commenter

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S–K (1981). In connection with these amendments, the Commission revised Item 601(b)(10)(ii)(D) to require that only material leases be filed as exhibits and revised Item 601(b)(10)(iii) regarding management contracts and compensatory plans.

[759] *See* 2004 Form 8–K Adopting Release. *See also* Items 1.01 and 1.02 of Form 8–K.

[760] *See* 2002 Form 8–K Proposing Release at 42917 ("Because we believe that agreements can be material for reasons other than the monetary amount involved, we propose to require disclosure under this item based on a 'materiality' standard and do not propose to tie the disclosure to a financial measure.").

[761] *See* 2004 Form 8–K Adopting Release at 15596. *See also* Instruction 1 to Item 1.01 of Form 8–K.

[762] Item 601(b)(10)(ii)(A) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(A)].

[763] Item 601(b)(10)(ii)(B) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(B)].

[764] Item 601(b)(10)(ii)(C) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(C)].

[765] Item 601(b)(10)(ii)(D) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(D)].

[766] *See* Silicon Valley; M. Liles.

[767] *Id.*

[768] *Id.* (referring to Item 404(a) for disclosure of related party agreements, Item 601(b)(4) for agreements establishing the terms of the registrant's securities, and financial statement footnotes for disclosure about joint venture agreements).

[769] *See* ABA 2.

recommended eliminating the requirement in Item 601(b)(10)(ii)(D) to file material leases and suggested that disclosure about physical properties usually does not provide investors with meaningful information.[770]

ii. Discussion—Background and Scope of Item 601(b)(10)(ii)

The Commission's 1965 amendments to Form 10–K included a requirement for registrants to file as exhibits certain specified contracts made in the ordinary course of business.[771] The contracts specified in Form 10–K at that time were similar to those identified today in Item 601(b)(10)(ii).[772] In addition, Form 10–K included a catch-all requirement to file an exhibit when the "amount of the contract, or its importance to the business of the registrant and its subsidiaries, [is] material, and the terms and conditions are of a nature of which investors reasonably should be informed." [773]

In 1980, the Commission codified in Regulation S–K the exhibit filing requirements, including the filing requirements for material contracts.[774] The requirements adopted in 1980 modified the existing requirements and were substantially similar to the current requirements in Item 601(b)(10)(ii)(A)–(D). The Commission modified the requirement to file agreements for the acquisition or sale of "fixed assets," adopting instead a requirement to file contracts for the acquisition or sale of any "property, plant or equipment."

iii. Request for Comment

241. Should we expand Item 601(b)(10)(ii) to include other types of contracts that, although made in the ordinary course of business, should be filed?

242. Should we revise our overall approach to Item 601(b)(10)(ii) and if so, how? Rather than specifying categories of contracts, is there an alternative approach that would appropriately capture those ordinary course contracts that are important to investors? For example, should we replace the current requirements in Item 601(b)(10)(ii)(A)–(D) with a requirement for registrants to file all ordinary course contracts entered into (i) since the beginning of the last fiscal year, (ii) that exceed a percent of some measure, such as revenue or net income and (iii) where the registrant has a direct or indirect material interest? If we took this approach, how should we establish the relevant time frame and percentage threshold and what measures should we use? What would be the benefits and challenges of such an approach?

243. Do contracts that are required to be filed pursuant to Item 601(b)(10)(ii) contain information that is important to an understanding of the registrant or its business? Are the types of contracts identified in Item 601(b)(10)(ii) sufficiently significant that they should be filed, notwithstanding that they were made in the ordinary course of business?

244. Is "immaterial in amount or significance" a helpful standard by which to determine when a contract need not be filed? How do registrants currently apply this standard? Should we revise the item to provide guidance on the meaning of that phrase? Is it possible for contracts to be material in amount but not in significance? Should we revise the item to exclude only contracts that are immaterial in amount *and* significance? Would it facilitate compliance if we revised Item 601(b)(10)(ii) to state in the affirmative that registrants must file all material contracts made in the ordinary course of business that fall within one or more of the categories listed?

245. Item 404(a) of Regulation S–K requires disclosure of any related party transaction since the beginning of the registrant's last fiscal year if the amount involved exceeds $120,000.[775] Unlike this bright-line disclosure threshold in Item 404(a), Item 601(b)(10)(ii)(A) generally requires registrants to file related party contracts as exhibits unless immaterial in amount or significance. Do the two different disclosure thresholds provide investors with the information they need to evaluate related party contracts? Should we revise Item 601(b)(10)(ii) to require registrants to file as exhibits all contracts involving related party transactions disclosed pursuant to Item 404(a)? What would be the benefits and challenges associated with such a revision?

246. Taken together, Items 601(b)(10)(i) and (ii) require registrants to file material contracts not made in the ordinary course of business as well as certain contracts made in the ordinary course of business that are material to the registrant. Should we revise Item 601(b)(10)(ii) to require registrants simply to file all contracts that are material to an understanding of the registrant or its business, whether or not entered in the ordinary course of business? Are there any contracts currently required to be filed as exhibits under Item 601(b)(10)(ii) that would not be captured by such a principles-based approach? Conversely, would this approach require registrants to file material ordinary course contracts that they are not currently required to file? Would this change enhance the information available to investors? What would be the benefits and challenges of this approach?

iv. Discussion—Disclosure Thresholds under Item 601(b)(10)(ii)

Qualitative Thresholds. Item 601(b)(10)(ii)(B) requires registrants to file any contract upon which the registrant's business is substantially dependent. The item provides examples of contracts upon which a registrant may be substantially dependent, such as continuing contracts to sell the major part of a registrant's products or services or to purchase the major part of a registrant's requirements of goods, services or raw materials.[776] A registrant's business also may be substantially dependent on any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the registrant's business depends to a material extent.[777] Since the item's adoption in 1965, the Commission has not provided registrants with additional guidance about how to determine

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[770] *See* Shearman.

[771] *See* 1965 Amendments to Form 10–K Adopting Release.

[772] *See id.* The 1965 amendments consisted of the following six categories: "(1) Directors, officers, promoters, voting trustees, or security holders named in answer to Item 5 [Principal Holders of Voting Securities] are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price; (2) It is of such materiality as to call for specific reference to it in answer to Item 4 [Changes in the Business] or 9 [Interest of Management and Others in Certain Transactions]; (3) The registrant's business is substantially dependent upon it, as in the case of continuing contracts to sell the major part of registrant's production in the case of a manufacturing enterprise or to purchase the major part of registrant's requirements of goods in the case of a distribution enterprise, or licenses to use a patent or formula upon which registrant's business depends to a material extent; (4) It calls for the acquisition or sale of fixed assets for a consideration exceeding 10 percent of all fixed assets of the registrant and its subsidiaries; (5) It is a lease under which a material amount of property is held by the registrant; or (6) The amount of the contract, or its importance to the business of the registrant and its subsidiaries, are material, and the terms and conditions are of a nature of which investors reasonably should be informed." *Id.* at 3433.

[773] *Id.* at 3433.

[774] *See* 1980 Exhibits Adopting Release.

[775] Item 404(a) of Regulation S–K [17 CFR 229.404(a)]. Registrants must describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest. *Id.*

[776] Item 601(b)(10)(ii)(B) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(B)].

[777] *Id.*

"substantial dependence" or "major part," as those terms are used in the exhibits requirements.

To enhance consistency and clarity, we are considering whether to quantify "substantial dependence" as used in the item. Possible alternatives include establishing a dollar amount or percentage threshold, similar to the thresholds used in Item 601(b)(10)(ii)(C), as described below. While an objective requirement may provide clarity for registrants in their efforts to comply with the exhibit requirements, this approach could inadvertently exclude material contracts or result in a large number of contracts being filed that contain information that is neither material nor useful for investors.

Quantitative Thresholds. Unlike subparagraph (B), which relies on a qualitative threshold, subparagraph (C) provides a quantitative threshold for filing exhibits. Specifically, Item 601(b)(10)(ii)(C) requires registrants to file any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding fifteen percent of such fixed assets of the registrant on a consolidated basis.[778]

As originally adopted in 1965, this requirement used a threshold of ten percent of all fixed assets of a registrant and its subsidiaries. In 1980, the Commission raised the threshold to fifteen percent,[779] consistent with similar requirements on Form S–1 at the time. In doing so, the Commission increased the threshold triggering the filing of such an agreement from consideration exceeding "10 percent of all fixed assets of the registrant and its subsidiaries" to consideration exceeding "15 percent of such fixed assets of the registrant on a consolidated basis." [780] In the adopting release, the Commission stated that the higher threshold was consistent with the purpose of reducing the burden that exhibit filing requirements impose on registrants "without materially impairing investor information or protection." [781]

In contrast to Item 601(b)(10)(ii)(C), Item 2.01 of 8–K requires a registrant to report the acquisition or disposition of a "significant amount of assets." [782] Instruction 4 to Item 2.01 provides that an acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded ten percent of the total assets of the registrant and its consolidated subsidiaries; or (ii) if it involved a business that is significant.[783] In addition, Form 8–K encompasses any acquisition or disposition, while Item 601(b)(10)(ii)(C) is limited to the acquisition of property, plant or equipment. Accordingly, an acquisition could trigger a disclosure requirement under Item 2.01 of Form 8–K without triggering a requirement to file the related contract under Item 601(b)(10)(ii)(C).

When proposing amendments to Form 8–K in 2002, the Commission sought comment on whether to remove the ten percent test from Item 2.01 and replace it with the more general "materiality" test used in Item 1.01 of Form 8–K.[784] Although several commenters supported harmonization between the reporting thresholds in Items 1.01 and 2.01, the Commission retained the ten percent test for Item 2.01, stating its intention that Item 1.01 address a different scope of agreements than those that trigger disclosure under Item 2.01. The Commission also indicated it did not believe that the use of two different thresholds will cause undue confusion.[785]

We are seeking public input on whether the fifteen percent threshold in Item 601(b)(10)(ii)(C) continues to provide investors with information that is important for an understanding of a registrant's business. We are interested in receiving input on whether a quantitative threshold is useful and, if so, whether fifteen percent of fixed assets is the appropriate measure. We also seek comment on the scope of contracts covered by subparagraph (C) and whether we should broaden the scope to better harmonize the exhibit filing requirements with the Form 8–K disclosure requirements. In addition, we are seeking public input on whether quantitative thresholds would be appropriate for other types of agreements required to be filed under Item 601(b)(10)(ii).

v. Request for Comment

247. Should we adopt additional or different qualitative or quantitative thresholds for determining when contracts identified in Item 601(b)(10)(ii) must be filed as exhibits? If so, what should these qualitative or quantitative thresholds be? Why?

248. Should we revise Item 601(b)(10)(ii)(B) to provide qualitative or quantitative standards for what constitutes "substantial dependence"? Should we define the term "major part" in addition to or in lieu of defining "substantial dependence"? What factors should we consider in developing definitions or quantitative thresholds? What other alternatives should we consider to clarify which contracts must be filed under Item 601(b)(10)(ii)?

249. How could we design a quantitative threshold that would accommodate the diversity of registrants and business models? What would be the disadvantages of a quantitative threshold? If we used quantitative measures based on registrants' financial statements, what would be the appropriate measures to use? Alternatively, should we tie the threshold to a registrant's market capitalization?

250. Should we provide guidance on the phrase "depends to a material extent" in Item 601(b)(10)(ii)(B)? If so, should we adopt a similar approach to the one discussed in the preceding request for comment? Alternatively, should our requirements distinguish franchise or license agreements to use a patent, formula, trade secret, process or trade name from contracts to sell the major part of a registrant's products or services or to purchase the major part of a registrant's requirements of goods, services or raw materials?

251. Should we revise Item 601(b)(10)(ii)(C) to either increase or decrease the fifteen percent threshold for exhibits relating to acquisitions of property, plant or equipment? Should the threshold continue to be based on fixed assets? Alternatively, should we eliminate the threshold in favor of a principles-based requirement, such as "material" or "significant" acquisitions of property, plant or equipment?

252. Should Item 601(b)(10)(ii)(C) continue to focus on property, plant and equipment? Should we expand the scope to require registrants to file contracts for the acquisition or

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[778] Item 601(b)(10)(ii)(C) of Regulation S–K [17 CFR 229.601(b)(10)(ii)(C)].

[779] *See* 1980 Exhibits Adopting Release.

[780] *See* Technical Amendments to Rules, Forms and Schedules; Delegation of Authority to the Director of the Division of Corporation Finance, Release No. 33–6260 (Nov. 13, 1980) [45 FR 76974 (Nov. 21, 1980)]. This release corrected the regulatory text adopted in the 1980 Exhibits Adopting Release, which "inadvertently chang[ed] the materiality test from a percentage of fixed assets to a percentage of all assets." *Id.* at 76976.

[781] 1980 Exhibits Adopting Release at 58823.

[782] A registrant must file a Form 8–K report if it has completed the acquisition or disposition of a significant amount of assets otherwise than in the ordinary course of business.

[783] Form 8–K [17 CFR 249.308]. For the definitions of "business" and "significant," Instruction 4 refers to Rule 11–01(d) and (b), respectively, of Regulation S–X [17 CFR 210.11–01].

[784] *See* 2002 Form 8–K Proposing Release. The Commission proposed retaining the ten percent threshold in Instruction 4 of Item 2.01 due to "companies' familiarity with th[e] test." *Id.* at 42919.

[785] *See* 2004 Form 8–K Adopting Release.

disposition of other assets, including intangible assets such as patents, licenses and other intellectual property? If so, should we consider a disclosure threshold consistent with Item 2.01 of Form 8–K? Would a different threshold be more appropriate?

6. Preferability Letter (Item 601(b)(18))

Registrants will, at times, make a voluntary change in accounting principles or practices when two or more generally accepted accounting principles apply. For example, a registrant may choose to switch its inventory valuation from last-in, first-out to first-in, first-out. When such a change occurs, Item 601(b)(18) requires a registrant to file a letter from its independent accountant indicating whether, in the independent accountant's judgment, the change is preferable under the circumstances.[786] No letter is required for changes made in response to a standard adopted by the FASB that creates a new accounting principle, expresses a preference for an accounting principle, or rejects a specific accounting principle.[787]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. None.

b. Discussion

The precursor to Item 601(b)(18), adopted in 1971, required registrants to describe and state the reasons for any change in accounting principles or practices that would materially affect the financial statements filed or to be filed for the current year.[788] Registrants also were required to file as an exhibit to Form 10–K or Form 10–Q a letter from the independent accountant approving or otherwise commenting on such changes.[789]

In 1975, the Commission amended Form 10–Q to require the accountant's letter to state whether the change, in the accountant's judgment, is preferable.[790] Several commenters objected to the requirement, stating that no standards existed for judging preferability among generally accepted accounting principles and that authoritative accounting principles only required management to justify that a change was preferable. The Commission concluded, however, that management's justification for a change in accounting principle must convince an independent accountant that, in the accountant's judgment, the new accounting principle is an improvement over alternative principles.[791] The requirement for a preferability letter was included in Form 10–K in 1980 when the Commission centralized all exhibit requirements within Regulation S–K.[792]

While Item 601(b)(18) requires an auditor to articulate the preferability of a change in accounting principle or policy, the nature of the auditors' statements varies.[793] In addition, there is no standard methodology for determining preferability. Since 2000, the number of preferability letters filed in a given year has fluctuated from a high of 108 in 2000 to a low of 57 in 2007.[794]

In addition to the exhibit requirement of Item 601(b)(18), disclosure about a voluntary change in accounting principles is required under Rule 10–01(b)(6) of Regulation S–X and under U.S. GAAP. In certain instances, Public Company Accounting Oversight Board ("PCAOB") Auditing Standards require auditors to address such changes in their opinions. While U.S. GAAP and PCAOB Auditing Standards require consideration of a registrant's change in accounting principle or practice, they differ from the Commission's requirements in terms of nature, timing and extent of reporting by the auditor. We are interested in commenters' views on whether existing disclosure requirements provide investors with sufficient information about a change in accounting principle without the need for registrants to file a preferability letter.

Commission Requirements. Rule 10–01(b)(6) of Regulation S–X requires registrants to (1) state in the notes to the financial statements the date and reasons for any material accounting change and (2) file, in accordance with Item 601(b)(18), a letter from the registrant's independent accountant as an exhibit to Form 10–Q.[795]

U.S. GAAP. U.S. GAAP requires disclosure in the notes to the financial statements about the nature of and reason for a change in accounting principle, including an explanation of why the newly adopted principle is preferable.[796] Registrants must report the change in accounting principle in the financial statements of both the interim and annual period of the change.[797]

PCAOB Auditing Standards. PCAOB Auditing Standard No. 6 ("AS No. 6") requires auditors to evaluate a change in accounting principle to determine whether, among other things, the registrant "has justified that the alternative accounting principle is preferable." [798] AU Section 722

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[786] Item 601(b)(18) of Regulation S–K [17 CFR 229.601(b)(18)]. Item 601(b)(18) refers to "independent accountant." We also refer to "independent accountant," as "independent auditor" in this release.

[787] *Id.*

[788] *See* Notice of Adoption of Amendments to Form 8–K, Form 7–Q, Form 10–Q, Form 10–K and Form N–1Q, Release No. 34–9344 (Sept. 27, 1971) [*not published in the* **Federal Register**].

[789] *See id.*

[790] *See* 1975 Interim Financial Reporting Release.

[791] *See id.* The Commission based its rationale on the Accounting Principles Board Opinion No. 20 (since replaced by Statement of Financial Accounting Standards No. 154 (ASC Topic 250)), which stated that (i) there is a presumption that an accounting principle once adopted should not be changed, (ii) that presumption may be overcome only if the company justifies the use of an alternative acceptable accounting principle on the basis that it is preferable, and (iii) the burden of justifying a change in accounting principle rests with the company proposing the change. *See* Proposals to Increase Disclosure of Interim Results by Registrants.

[792] *See* 1980 Exhibits Adopting Release. *See also supra* note 712 and accompanying text.

[793] As an example, one auditor's letter reads: "There are no authoritative criteria for determining a 'preferable' presentation method based on the particular circumstances; however, we conclude that such change in the method of accounting is to an acceptable alternative method which, based on your business judgment to make this change and for the stated reasons, is preferable in your circumstances." Another states: "Based on our review and discussion, with reliance on management's business judgment and planning, we concur that the newly adopted method of accounting is preferable in the Company's circumstances." Another auditor's letter provides: "We believe, on the basis of the facts so set forth and other information furnished to us by appropriate officials of the Company, that the accounting change described in your Form 10–Q is to an alternative accounting principle that is preferable under the circumstances." One preferability letter briefly states: "In our judgment, such change is an alternative accounting principle that is preferable under the circumstances."

[794] *See* Audit Analytics, *Preferability Letters: A 15 Year Review,* Jan. 2, 2015, *available at http://www.auditanalytics.com/blog/preferability-letters-a-15-year-review.* Over the last fifteen years the most common reasons for filing preferability letters have been changes in accounting principles or practices related to: (1) Goodwill Impairment Measurement Date; (2) Inventory Valuation; (3) Expense Recognition; (4) Classification; and (5) Benefits Program.

[795] Rule 10–01(b)(6) of Regulation S–X [17 CFR 210.10–01(b)(6)]. Rule 8–03(b)(5) of Regulation S–X is the equivalent requirement for SRCs. As part of its work to develop recommendations for the Commission for potential changes to update or simplify certain disclosure requirements, the staff is separately considering Rules 8–03(b)(5) and 10–01(b)(6) of Regulation S–X which require registrants to disclose the date and reasons for any material accounting change. For a description of this project, *see* Section I.

[796] *See* ASC 250–10–50–1(a). ASC 250–10–45–12 also requires companies to justify the use of an alternative accounting principle on the basis that it is preferable.

[797] *See* ASC 250–10–50–2.

[798] AS No. 6, paragraph 7. *See also* Auditing Standard No. 6—Evaluating Consistency of Financial Statements and Conforming Amendments, PCAOB Release No. 2008–001, Jan. 29, 2008, at note 14, *available at http://pcaobus.org/Rules/Rulemaking/Docket023/PCAOB_Release_No._2008-001--Evaluating_Consistency.pdf* (noting that the language in AS No. 6 was updated "to be

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addresses the review of interim financial statements and requires the auditor to, among other things, make inquiries of management on changes in accounting principles or methods of application. AU 722 does not require the auditor to specifically express a view on the preferability of the change as part of an interim review.

The auditor's opinion on the annual financial statements must discuss the nature of the change in accounting principle if the change has a material effect on the financial statements, but may not necessarily address preferability.[799] Under AU 508, the auditor is not required to opine explicitly on the preferability of the change. Rather, if the auditor concludes a registrant has justified that the alternative accounting principle is preferable (as required by AS No. 6 and U.S. GAAP), then it must include an explanatory paragraph in its report identifying the nature of the change, if the change has a material effect on the financial statements.[800] If the auditor concludes that the registrant has not justified the preferability of the alternative accounting principle, the auditor should consider the matter a departure from U.S. GAAP and, if the effect of the change in accounting principle is material, issue either a qualified or adverse opinion.[801] Consequently, where the change in accounting principle is material, an auditor's report without a qualified or adverse opinion and identifying the nature of the change is akin to the preferability letter filed under Item 601(b)(18) as both documents convey the auditor's conclusion that the registrant has justified that the alternative accounting principle is preferable.

Unlike a preferability letter filed under Item 601(b)(18), the audit opinion will include an explicit statement as to preferability only when the registrant has not provided a reasonable justification that the alternative accounting principle is preferable.[802] Additionally, while Item 601(b)(18) requires registrants to file a preferability letter with the first Form 10–Q following the date of the accounting change, AU 508 requires a statement in the opinion about this change only in the annual financial statements on Form 10–K. U.S. GAAP requires disclosure about this change in the notes to the interim financial statements.[803]

We are seeking public input on whether to eliminate the exhibit requirement of Item 601(b)(18) in light of the significant overlap with the accounting requirements under U.S. GAAP and the PCAOB auditing standards. We are also interested in whether requirements in U.S. GAAP and PCAOB auditing standards are sufficient to alert investors to changes in a registrant's accounting policies or principles. We also seek input on the utility of Item 601(b)(18) given the small number of preferability letters filed and whether the small number of preferability letters reflects decreased utility and importance of this requirement or if, alternatively, these limited occurrences make this disclosure more valuable to investors.

c. Request for Comment

253. Given the development of auditing and accounting standards over the past 40 years, including the adoption of more prescriptive standards such as SFAS No. 154[804] and AS No. 6, do preferability letters continue to provide incremental information to investors that is not otherwise available in either the auditor's opinion on the annual financial statements or in the notes to the interim financial statements? If so, is this incremental information important to investors and how could it be improved?

254. Should we revise Item 601(b)(18) to specify the language that must be included in a preferability letter? Is there any particular language that gives investors more insight into the determination that the change is preferable? In light of the lack of a standard for assessing preferability, do investors receive more information from a preferability letter than from an auditor's report? Does it depend on the nature of the change in accounting principle?

255. Should we eliminate Item 601(b)(18) in light of the current requirements under U.S. GAAP and the PCAOB's auditing standards? When a change in accounting principle is material, is an auditor's report without a qualified or adverse opinion sufficient to convey the independent accountant's conclusion that the registrant has justified the change to be preferable? Would eliminating the exhibit requirement affect the independent accountant's analysis of whether an accounting change is preferable?

256. Would it be more appropriate for the independent accountant to indicate in the auditor's report whether a change in accounting principle is to an alternative principle that in the auditor's judgment is preferable under the circumstances?

7. Subsidiaries and Legal Entity Identifiers

Item 601(b)(21) requires registrants to list all of their subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.[805] The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by the report.[806]

A legal entity identifier ("LEI") is a 20-character, alpha-numeric code that connects to key reference information that allows for unique identification of entities engaged in financial transactions. Recently, the Commission has adopted rules requiring disclosure of LEIs in certain circumstances, if available, and in one instance the Commission has mandated use of

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consistent with SFAS No. 154"). The PCAOB adopted AS No. 6, in part, in response to the FASB's issuance of Statement of Financial Accounting Standards No. 154 (ASC 250). *See supra* note 791. AS No. 6 requires the auditor to assess whether the company has met its burden of justifying the change in accounting principle as set forth in SFAS No. 154 (ASC 250).

[799] *See* AU 508, Paragraph 17A.

[800] *See id.*

[801] *See* AU 508, Paragraph 17E.

[802] *See* AU 508, Paragraph 52.

[803] *See supra* note 797 and accompanying text. Under U.S. GAAP, companies should, whenever possible, adopt any accounting changes during the first interim period of a fiscal year. *See* ASC Topic 250–10–45–16.

[804] *See supra* note 791.

[805] Item 601(b)(21)(i) of Regulation S–K [17 CFR 229.601(b)(21)(i)].

[806] Item 601(b)(21)(ii) of Regulation S–K [17 CFR 229.601(b)(21)(ii)]. This exception does not apply to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

The term "significant subsidiary" is defined by reference to Rule 1–02(w) of Regulation S–X [17 CFR 210.1–02(w)]. Under that rule, a significant subsidiary means any subsidiary that meets any of the following conditions: (1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed ten percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds ten percent of its total common shares outstanding at the date the combination is initiated); or (2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds ten percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or (3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests exceeds ten percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year. *Id.*

LEI.[807] LEI disclosure is not required in Exchange Act reports.

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter recommended that we require disclosure of all subsidiaries instead of only significant subsidiaries, asserting that registrants use the Commission's significance test to hide material information from investors.[808] This commenter also recommended requiring disclosure of additional information for each subsidiary, such as profits earned and number of employees, for investors to understand registrants' structures and their international strategies, on the grounds that this information is necessary to understand a registrant's corporate structure and tax strategy.

Another commenter recommended requiring registrants to disclose each country of operation and the name of each entity domiciled in each country of operation; the number of employees physically working in each country of operation; the total pre-tax gross revenue of each entity in each country of operation; and the total amount of payments made to governments by each entity in each country of operation.[809] This commenter stated that investors have an interest in understanding how much of a registrant's profits are generated from business operations and how much is a function of tax strategies. This commenter added that a registrant's filings should explain to investors the tax liabilities it incurred for the year, how much it paid, and where. While not addressing Item 601(b)(21) specifically, one commenter recommended revising the test for determining whether a subsidiary is a significant subsidiary by replacing the existing pre-tax income, investment and asset test with a revenue test and a fair value test.[810]

We received two comment letters addressing LEIs.[811] One of these commenters recommended the Commission consider "a commitment to adopt" the LEI endorsed by the G20 as an "authoritative, unique, and common identifier for entities subject to financial regulators, throughout existing forms." [812] This commenter specified that a registrant's list of subsidiaries would be more useful to investors if the Commission required issuers to disclose each subsidiary's LEI. The other commenter recommended the Commission move away from "proprietary identifiers such as the CUSIP and toward an open source identifier such as the Legal Entity Identifier" stating this "will make it easier for investors to connect other datasets with structured data from the Commission." [813]

b. Subsidiaries

i. Discussion

Before the adoption of Regulation S–K, Form 10–K required registrants to disclose a list or diagram of all parents and subsidiaries of the registrant in the text of the annual report.[814] In addition, for each entity identified, registrants were required to disclose the percentage of voting securities owned or other bases for control by the immediate parent.[815] Registrants were permitted to omit the names of particular subsidiaries if those subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.[816] In 1970, the Commission revised Form 10–K to permit registrants to omit the names of certain consolidated wholly-owned multiple subsidiaries carrying on the same line of business.[817] This exclusion was similar to one recommended in the Wheat Report.[818]

With the adoption of the integrated disclosure system, the Commission replaced the Form 10–K subsidiary disclosure requirement with a less-detailed requirement to file as an exhibit a list of subsidiaries and each subsidiary's jurisdiction of incorporation or organization.[819] This change was based on the Sommer Report which recommended that Form 10–K contain only a "list of all subsidiaries," as opposed to the additional disclosure requirements mentioned above, such as the bases for control of each subsidiary.[820] In the adopting release, the Commission also noted that, although a few commenters stated that no such exhibit relating to subsidiaries, in any form, should be required, most commenters did not object to the exhibit requirement if insignificant subsidiaries were not required to be disclosed.[821] The Commission agreed with the commenters that listing all subsidiaries would be too burdensome and adopted the exhibit requiring only the names of significant subsidiaries.[822] In 1982, the Commission amended the item to allow registrants to incorporate by reference their lists of subsidiaries if an accurate and complete list is contained in a document previously filed with the Commission.[823]

Disclosure provided under Item 601(b)(21) has decreased in the last several years. Specifically, the average number of subsidiaries reported by registrants under Item 601(b)(21) is estimated to have decreased approximately twenty percent in the five years from 2009 to 2014. However, this decrease is roughly equivalent to the increase observed in the previous five years, from 2004 to 2009.[824] According to one press report, in recent years certain large registrants have reduced the number of subsidiaries listed pursuant to Item 601(b)(21) by omitting subsidiaries that are not significant.[825] While omission of insignificant subsidiaries from the exhibit is permitted under Item 601(b)(21), the report suggested such registrants may be seeking to avoid disclosing subsidiaries located in countries regarded as tax havens at a time when government officials and academics are scrutinizing the use of offshore tax havens.[826] We are interested in commenters' views on the impact of the rule's exclusion for insignificant subsidiaries.

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[807] *See infra* notes 831 to 835 and accompanying text.

[808] *See* US SIF 1.

[809] *See* AFL–CIO.

[810] *See* ABA 1 (stating that, compared to existing tests, revenue and fair value-based tests are more reliable indicators of the significance of a tested entity to the registrant, easier to calculate and calculated using more consistently measured amounts that are not affected by different bases of accounting). *See also supra* note 806.

[811] *See* Data Transparency Coalition and letter from TagniFi, LLC (Jan. 27, 2016) ("TagniFi").

[812] *See* Data Transparency Coalition (noting that the "Commission has already proposed requiring the LEI to be included in security-based swap reports where available, but has not yet committed to use the LEI in its corporate disclosure system" and that the "Commission should incorporate commonly-used data fields wherever applicable, starting with the LEI . . .").

[813] *See* TagniFi.

[814] *See, e.g.,* 1965 Amendments to Form 10–K Adopting Release.

Item 1(a) of former 10–K required disclosure of subsidiaries of "material significance in relation to the total enterprise represented by the registrant and its subsidiaries, in respect of either (1) the investment in and advances to such subsidiary, or (2) the sales or operating revenues of such subsidiary, or (3) the essential nature of the function performed by such subsidiary in the total enterprise represented by the registrant and its subsidiaries." The item also required certain disclosures of omitted subsidiaries such as the number of subsidiaries omitted and the total investment of the registrant in such omitted subsidiaries. *Id.*

[815] This disclosure was required under Item 3 of prior Form 10–K. *See* 1965 Amendments to Form 10–K Adopting Release.

[816] *See, e.g.,* 1965 Amendments to Form 10–K Adopting Release. The item requirement did not define the term "significant subsidiary." Registrants were also required to indicate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed. *Id.*

[817] *See* 1970 Revised Form 10–K Adopting Release. Current Item 601(b)(21)(ii) contains substantially the same exception, permitting the omission of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given.

[818] *See* Wheat Report at Appendix X–3 (recommending that the names of consolidated totally-held subsidiaries may be omitted on a Form 10–K, provided that the number of such subsidiaries shall be given together with an explanation of the basis for omission of names).

[819] *See* 1980 Form 10–K Adopting Release.

[820] *See* 1980 Form 10–K Proposing Release. The Commission also stated that after consideration, it had determined that the value of parent and subsidiary data is not sufficient to warrant its inclusion in Form 10–K itself. In addition, it noted its belief that occasional references to such data may be useful. Accordingly, the Commission proposed a new exhibit requirement rather than including this disclosure in Form 10–K itself. *See id.*

[821] *See* 1980 Form 10–K Adopting Release.

[822] *See id.*

[823] *See* 1982 Integrated Disclosure Adopting Release.

ii. Request for Comment

257. Should we revise Item 601(b)(21) to eliminate the exclusions and require registrants to disclose all subsidiaries? What would be the benefits and challenges associated with this alternative?

258. Should we expand the exhibit requirement to include additional disclosure about the registrant's subsidiaries? What additional information would be important to investors and why?

259. Should we require registrants to include an organization or corporate structure chart or similar graphic depicting their subsidiaries and their basis of control? How could such a graphic facilitate investors' understanding of a registrant's corporate structure? Should we require this chart or graphic as an exhibit or in the text of the annual report? What would be the challenges associated with this approach?

260. For purposes of identifying which subsidiaries a registrant may omit from the exhibit, Item 601(b)(21) relies on the definition of "significant subsidiary" in Rule 1–02(w) of Regulation S–X. Does this definition appropriately exclude subsidiaries that are not important to investors? Does it exclude any subsidiaries that should be included? Should we consider a different definition or test for excluding certain subsidiaries from the exhibit? If so, what factors should we consider?

c. Legal Entity Identifiers

i. Discussion

While there are currently many ways to identify entities, there is no unified global identification system for legal entities across markets and jurisdictions. The LEI is a reference code to uniquely identify a legally distinct entity that engages in a financial transaction.[827] It is based on an international standard published by the International Organization for Standardization in June 2012.[828] Efforts to expand the use of a universal LEI have progressed significantly over the last few years.[829]

Obtaining an LEI entails both initial registration and annual maintenance fees and is done through local operating utilities such as the Global Market Entity Identifier utility in the United States.[830] Fees are not imposed to use or access LEIs, and all of the associated reference data needed to understand, process, and utilize the LEIs is widely and freely available.

In recent rulemakings, the Commission has prescribed disclosure of LEI, if available, for parties to certain financial transactions. For example, the Commission recently prescribed disclosure of an obligor's LEI, if available, with respect to a rating action involving a credit rating of an obligor as an entity.[831] In doing so, it stated that use of an LEI can promote accuracy and standardization of NRSRO data and therefore can further the purpose of allowing users of credit ratings to compare the performance of credit ratings by different NRSROs.[832] As another example, the Commission recently adopted an LEI disclosure requirement related to credit risk retention for open market collateralized loan obligations ("CLOs"), if an LEI has been obtained by the obligor, stating that this requirement would allow investors to better track the performance of assets originated by specific originators.[833] While these recent rulemakings have required LEI disclosure only if available, the Commission has mandated use of LEI in the context of security-based swap transactions[834] and has proposed mandatory use of LEI in investment company reporting.[835] To the extent that LEIs become more widely used by regulators and the financial industry, they could potentially facilitate investor and Commission use of registrant data by showing networks of control, ownership, liability and risks.

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[824] These estimates are based on DERA staff analysis of Item 601(b)(21) data collected using text analysis techniques by academic researchers. The estimates represent approximations and may be affected by, among other things, the limitations of text analysis and sample composition changes over this time frame. The data is *available at https://sites.google.com/site/scottdyreng/Home/data-and-code*. For more information about this dataset, *see* S. Dyreng and B. Lindsey, *Using Financial Accounting Data to Examine the Effect of Foreign Operations Located in Tax Havens and Other Countries on U.S. Multinational Firms' Tax Rates,* 47 J. Acct. Res. 1283, 1283–1316 (2009); and S. Dyreng, B. Lindsey and J. Thornock, *Exploring the Role Delaware Plays as a Domestic Tax Haven,* 108 J. Fin. Econ. 751, 751–772 (2013).

[825] *See* Jessica Holzer, *From Google to FedEx: The Incredible Vanishing Subsidiary,* The Wall Street Journal, May 22, 2013, *available at http://www.wsj.com/articles/SB10001424127887323463704578497290099032374* (noting the number of subsidiaries disclosed has declined from over 100 subsidiaries to single digits among certain large registrants).

[826] *Id. See also* U.S. PIRG Education Fund and Citizens for Tax Justice, *Offshore Shell Games 2015, The Use of Offshore Tax Havens by Fortune 500 Companies,* Oct. 2015, *available at http://ctj.org/pdf/offshoreshell2015.pdf* (stating that, based on information in Exhibit 21 to Form 10–K, 358 of Fortune 500 companies operated subsidiaries in tax haven jurisdictions at the end of 2014 and noting that "it is possible that many of the remaining 142 companies simply do not disclose their offshore tax haven subsidiaries"); and United States Government Accountability Office, *International Taxation, Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions,* Report to Congressional Requestors, Dec. 2008, *available at http://www.gao.gov/assets/290/284522.pdf* (concluding that 83 of the 100 largest publicly traded U.S. corporations in terms of 2007 revenue reported having subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions. Findings were based on information filed in Exhibit 21 to Form 10–K, and the report notes that the findings may be understated because "the SEC only requires public companies to report significant subsidiaries . . .").

[827] For further information about LEIs, *see Frequently Asked Questions: Global Legal Entity Identifier (LEI),* Aug. 2012 *available at http://www.treasury.gov/initiatives/wsr/ofr/Documents/LEI_FAQs_August2012_FINAL.pdf.*

[828] *See* International Organization for Standardization, *Financial Services—Legal Entity Identifier,* 2012, Reference No. ISO 17442–2012(E).

[829] *See, e.g., The Global LEI System and regulatory uses of the LEI,* Nov. 5, 2015, *available at http://www.leiroc.org/publications/gls/lou_20151105-1.pdf* (progress report by the Legal Identifier Regulatory Oversight Committee, including an annex listing regulatory actions in the United States, the EU countries, and eight other countries which require, request, or allow the use of LEIs). The global LEI system currently has over 419,000 registrations and is growing. *See* the Global LEI Foundation daily updated "concatenated file," which includes all LEIs issued globally and related LEI reference data, *available at https://www.gleif.org/en/lei-data/gleif-concatenated-file/lei-download#* or *http://openleis.com.*

[830] As of December 7, 2015, the cost of obtaining an LEI from the Global Markets Entity Identifier ("GMEI") Utility in the United States was $200, plus a $19 per record surcharge for the LEI Central Operating Unit. The annual cost of maintaining an LEI from the GMEI Utility was $100, plus a $19 surcharge for the LEI Central Operating Unit. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp.*

[831] *See* Nationally Recognized Statistical Rating Organizations, Release No. 34–72936 (Aug. 27, 2014) [79 FR 55077 (Sept. 15, 2014)] ("2014 NRSRO Amendments Release"). The Commission revised Exchange Act Rule 17g–7 to require that NRSROs, taking rating action with respect to certain obligors or issuers, disclose the LEI issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation of the obligor or issuer, if available, or, if an LEI is not available, the Central Index Key (CIK) number of the obligor or issuer, if available. *Id. See also* Rule 17g–7(b)(2)(iii)(A) and (iv)(A) [17 CFR 240.17g–7].

[832] *See* 2014 NRSRO Amendments Release. The Commission also stated that coded identifiers like LEI and CIK will add a level of standardization to the credit rating history data, making for easier electronic querying and processing. *Id.*

[833] *See* Credit Risk Retention, Release No. 34–73407 (Oct. 22, 2014) [79 FR 77601 (Dec. 24, 2014)]. Under the final rule's lead arranger option for open

ii. Request for Comment

261. Should we require registrants to disclose their LEI and the LEIs of their subsidiaries (if available) in the list of subsidiaries filed under Item 601(b)(21)? How would this information benefit investors? Should the industry in which the company operates or the extent to which the company engages in financial market transactions affect whether disclosure of LEIs is required? What would be the costs of requiring disclosure of this information?

262. Should our rules encourage registrants to obtain an LEI? If so, how could we structure our rules, consistent with our authority under the Securities Act and the Exchange Act, to achieve this purpose? For example, should we make obtaining and maintaining an LEI a condition to any of our existing disclosure accommodations or alternatives? Why or why not? If so, should such a condition be limited to certain types of registrants, such as those operating in financial services? For registrants that have not obtained an LEI, will these registrants seek to obtain an LEI in the future absent any regulatory incentive to do so? In addition to the fees for obtaining and maintaining an LEI, would there be other costs associated with obtaining LEIs?

263. Some registrants may have hundreds or thousands of subsidiaries or affiliates operating globally while other registrants have simple corporate structures. If we required registrants to disclose LEIs (if available) in the list of significant subsidiaries, should we limit the requirement to larger registrants or larger subsidiaries, independent of the industry in which the registrant operates? For example, should we limit the requirement to large accelerated filers or well-known seasoned issuers (WKSIs)?

H. Scaled Requirements

1. Categories of Registrants Eligible for Scaled Disclosure

Over the years, the Commission has developed a disclosure system that provides regulatory relief in the form of reduced disclosure requirements for certain smaller registrants. Although initially developed to facilitate smaller companies' access to the capital markets,[836] these reduced or scaled disclosure requirements also apply to annual and quarterly reports. Currently, registrants are eligible for scaled disclosure if they qualify as an SRC or an EGC. SRCs are registrants having less than $75 million in public float (*i.e.*, the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates) or, if public float is zero, less than $50 million in annual revenue in the last fiscal year.[837]

In 2012, Title I of the JOBS Act created a new category of issuer called an "emerging growth company." Like SRCs, EGCs are eligible for a variety of accommodations, including scaled disclosure requirements.[838] A company qualifies as an EGC if it did not complete its first registered sale of common equity securities on or before December 8, 2011 and has total annual gross revenues of less than $1 billion during its most recently completed fiscal year.[839] A company retains EGC status until the earliest of the following:

- The last day of its fiscal year during which its total annual gross revenues are $1 billion or more;
- the date it is deemed to be a large accelerated filer under the Commission's rules;
- the date on which it has issued more than $1 billion in non-convertible debt in the previous three years; or
- the last day of the fiscal year following the fifth anniversary of the first registered sale of common equity securities of the issuer.[840]

The Commission has specified other categories of registrants for different purposes. These include: Accelerated filers, with a public float of $75 million or more but less than $700 million; and large accelerated filers, with a public float of $700 million or more.[841] A filer with a public float of less than $75 million is a "non-accelerated filer." [842]

These categories determine periodic reporting schedules.[843] They also determine the age requirements for financial statements under Regulation S–X[844] and certain requirements for audits of internal control over financial reporting ("ICFR") under Item 308 of Regulation S–K.[845] In addition, accelerated and large accelerated filers are subject to other disclosure requirements, such as the requirements to disclose their Internet address,[846] information about how they make their periodic reports available,[847] and a description of any open unresolved staff

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market CLOs, the sponsor is required to disclose a complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing). This list requires, among other things, the full legal name, Standard Industrial Classification category code and LEI (if an LEI has been obtained by the obligor) of the obligor of the loan or asset. [24 CFR 267.9].

[834] *See* Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Release No. 34–74244 (Feb. 11, 2015) [80 FR 14563 (Mar. 19, 2015)] ("2015 Regulation SBSR Release").

[835] In connection with our efforts to modernize reporting and disclosure by registered investment companies, the Commission proposed new Form N–PORT in May of 2015. Form N–PORT would require certain registered investment companies to report information about their monthly portfolio holdings in a structured data format. We proposed inclusion of LEIs in Part A of Form N–PORT and stated that inclusion of this information would facilitate the ability of investors and the Commission to link the data reported on Form N–PORT with data from other filings or sources that is or will be reported elsewhere as LEIs become more widely used by regulators and the financial industry. *See* Investment Company Reporting Modernization, Release No. 33–9776 (May 20, 2015) [80 FR 33589 (June 12, 2015)] ("2015 Investment Company Release") at notes 40–43 and accompanying text.

[836] *See* Small Business Initiatives Adopting Release and Form S–18 Release.

[837] Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

[838] Public Law 112–106, Secs. 102–104, 126 Stat. 306 (2012). For a discussion of the scaled disclosure accommodations available to SRCs and EGCs, *see* Section IV.H.2.

[839] Public Law 112–106, Sec. 101, 126 Stat. 306 (2012); 15 U.S.C. 77b(a)(19); 15 U.S.C. 78c(a)(80).

[840] *Id.* In addition, the FAST Act amended Securities Act Section 6(e)(1) [15 U.S.C. 77 f(e)(1)] to provide a grace period for EGCs at risk of losing their status as an EGC after the initial filing or confidential submission of their IPO registration statement but before the IPO is completed. Such companies shall continue to be treated as an EGC through the earlier of the consummation of the IPO or one year after they would otherwise cease to be an EGC. *See* Public Law 114–94, Sec. 71002, 129 Stat. 1312 (2015).

[841] Exchange Act Rule 12b–2 [17 CFR 240.12b–2]. Under Rule 12b–2, accelerated filers and large accelerated filers must also have been subject to the requirements of Exchange Act Section 13(a) or 15(d) for at least 12 months and must not be eligible to use the SRC requirements under Regulation S–K for its annual and quarterly reports. *Id. See also* Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports, Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626 (Dec. 27, 2005)] ("2005 Accelerated Filer Revisions Release").

[842] *See* 2005 Accelerated Filer Revisions Release. While a "non-accelerated filer" is not defined in Exchange Act Rule 12b–2, it represents a category of filer that, among other things, has a different deadline for filing periodic reports.

[843] *See* 2005 Accelerated Filer Revisions Release.

[844] Rule 3–01 of Regulation S–X [17 CFR 210.3–01].

[845] Item 308 of Regulation S–K [17 CFR 229.308].

[846] Item 101(e)(3) of Regulation S–K [17 CFR 229.101(e)(3)].

[847] Item 101(e)(4) of Regulation S–K [17 CFR 229.101(e)(4)].

comments on their periodic or current reports.[848]

The following table summarizes the criteria for determining whether a company qualifies as an EGC, SRC, non-accelerated filer, accelerated filer or large accelerated filer.

Category of filer	Public float[849] to enter status	Revenues[850] to enter status	Criteria to exit status	Public float to re-enter status (after exceeding threshold(s))	Revenues to re-enter status (after exceeding threshold(s))
EGC	N/A	<$1 billion	• Revenues ≥$1 billion • 5th anniversary of IPO[851]. • Non-convertible debt >$1 billion[852]. • Float ≥$700 million[853].	N/A	N/A.
SRC	<$75 million	<$50 million[854]	Float ≥$75 million	<$50 million[855]	<$40 million.[856]
Non-Accelerated Filer	<$75 million	N/A	Float ≥$75 million	<$50 million[857]	N/A.
Accelerated Filer	≥$75 million but <$700 million.	N/A	Float <$75 million or ≥$700 million.	<$500 million but ≥$50 million[858].	N/A.
Large Accelerated Filer	≥$700 million	N/A	Float <$700 million	N/A	N/A.

a. Comments Received

S–K Study. One commenter noted that the $1 billion threshold for EGCs established in the JOBS Act appeared to be arbitrary and opposed any potential Commission guidance broadening the definition of EGCs, because it would unnecessarily increase the risks to investors.[859] Two commenters suggested that the Commission should modify Regulation S–K to apply to different classes of EGCs, such as those that reach specified revenue levels lower than $1 billion, or to phase in different requirements after a certain period of time following the IPO.[860]

Disclosure Effectiveness Initiative. One commenter suggested that overreliance on public float to define SRCs and non-accelerated filers creates a compliance burden for companies with high valuations that would be considered "small" by any "reasonable observer." [861] This commenter recommended revising the definition of SRC and non-accelerated filer to include any issuer with public float below $250 million, or annual revenues below $100 million regardless of its public float, to avoid grouping highly valued small companies with little or no revenue with larger corporations.

b. Discussion

The Commission's practice of providing disclosure accommodations to smaller companies with less established trading markets dates back to 1979. In providing these accommodations and determining what categories of registrants are eligible for scaled disclosure requirements, the Commission has sought to promote capital formation and reduce compliance costs while maintaining investor protections.[862]

Our current system of reporting and registration for SRCs is based on Form S–18, which allowed an entity that was not previously a reporting company to raise a limited amount of capital without immediately incurring the full range of disclosure and reporting obligations required of other issuers.[863] As part of a larger effort to facilitate capital raising by small businesses and reduce the compliance burdens placed on these companies by the federal securities laws, the Commission created Regulation S–B in 1992 and rescinded

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[848] Item 1B of Part I of Form 10–K.

[849] Public float is computed as of the last business day of company's most recently completed second fiscal quarter. Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

[850] Revenues are as reported in a company's most recently completed fiscal year. [15 U.S.C. 78c(a)(80)]; Exchange Act Rule 12b–2 [17 CFR 240.12b–2]; Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

[851] Ineligibility begins on the last day of the fiscal year in which the fifth anniversary occurs. [15 U.S.C. 78c(a)(80)]. The Division has interpreted the phrase "first sale of common equity securities" under the JOBS Act ("IPO" in the table above) not to be limited to a company's initial primary offering of common equity securities for cash. It could also include offering common equity pursuant to an employee benefit plan on a Form S–8 as well as a selling shareholder's secondary offering on a resale registration statement. *See* Jumpstart Our Business Startups Act Frequently Asked Questions, Generally Applicable Questions on Title I of the JOBS Act, Question 2 (Apr. 28, 2012), *available at https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.*

[852] Ineligibility begins on the date on which the company has issued more than $1 billion in non-convertible debt during the previous three year period. [15 U.S.C. 78c(a)(80)].

[853] *See supra* note 840.

[854] Revenue test applies only if public float is zero. Item 10(f)(1)(iii) of Regulation S–K [17 CFR 229.10(f)(1)(iii)].

[855] Once a registrant fails to qualify as an SRC, it will remain unqualified unless its public float falls below $50 million as of the last business day of its second fiscal quarter, or if public float is zero, if revenues fall below $40 million during its previous fiscal year. Item 10(f)(2)(iii) of Regulation S–K [17 CFR 229.10(f)(2)(iii)].

[856] *Id.*

[857] Once a registrant becomes an accelerated filer, it will remain an accelerated filer unless it determines at the end of a fiscal year that its public float was less than $50 million as of the last business day of it most recently completed second fiscal quarter. The registrant will not become an accelerated filer again unless it subsequently meets the conditions for initial qualification as an accelerated filer. Rule 12b–2 of the Exchange Act [17 CFR 240.12b–2].

[858] Once a registrant becomes a large accelerated filer, it will remain a large accelerated filer unless it determines at the end of a fiscal year that its public float was less than $500 million as of the last business day of it most recently completed second fiscal quarter. The registrant will not become a large accelerated filer again unless it subsequently meets the conditions for initial qualification as a large accelerated filer. *Id.*

[859] *See* letter from Council of Institutional Investors (Aug. 9, 2012) ("CII").

[860] *See* Silicon Valley and M. Liles.

[861] *See* Biotech Industry Organization.

[862] *See, e.g.,* Form S–18 Release; and Small Business Initiatives, Release No. 33–6924 (Mar. 11, 1992) [57 FR 9768 (Mar. 20, 1992)] ("Small Business Initiatives Proposing Release").

[863] *See* Small Business Initiatives Adopting Release and Form S–18 Release. Form S–18 was "in the nature of an experiment" for use by certain non-reporting issuers seeking to register certain offerings of less than $5 million. Registrants using Form S–18 were permitted to provide narrative disclosure somewhat less extensive than Form S–1 and audited financial statements for two fiscal years instead of the three fiscal years required in Form S–1. In addition, and to help reduce the expenses resulting from registration and reporting under the Securities Act and the Exchange Act, the Commission allowed Form S–18 registrants to include this scaled narrative and financial disclosure in their initial Form 10–K. *See* Form S–18 Release. *See also* Section III.A.2.b for a discussion of Form S–18.

Notably, while Form S–18 was intended to facilitate a small business's access to public capital markets, eligibility to use the form was not determined by the size of the issuer. After observing the form's use, the Commission later expanded the availability of Form S–18. *See supra* note 78. The offering threshold was raised to $7.5 million in 1983. *See* Revisions to Optional Form S–18, Release No. 33–6489 (Sept. 23, 1983) [48 FR 45386 (Oct. 5, 1983)].

Form S–18.[864] Regulation S–B was a new integrated disclosure system modeled after Form S–18 and specifically tailored to "small business issuers," which it defined as registrants with annual revenues of less than $25 million whose voting stock had a public float of less than $25 million.

In 2007, the Commission replaced the "small business issuer" definition with the current definition for "smaller reporting companies," which expanded the universe of registrants eligible for scaled disclosure.[865] Unlike the dual eligibility test under Regulation S–B, which required separate calculations using both public float and annual revenues, the 2007 definition, which remains in effect today, eliminated the revenue test for most companies.[866] The Commission stated its belief that this would simplify and streamline the definition while expanding the number of companies eligible to qualify. The majority of commenters also supported a revenue test only if a company is unable to calculate public float.

Recently, we have received recommendations to revisit some of our registrant categories eligible for scaled disclosure, with particular focus on expanding the SRC definition to include a greater number of registrants.[867] In the S–K Study, the staff recommended consideration of the criteria used to determine eligibility for potential further scaling of disclosure requirements and, in particular, whether it would be appropriate to scale for companies other than EGCs. The staff also noted that any determination of which companies should be allowed to scale their disclosures, how companies should migrate to a standard disclosure regime as they mature, and the extent to which disclosure of previously undisclosed information should later be required should reflect the overarching economic principles recommended in the S–K Study. The staff further recommended consideration of the eligibility criteria for SRCs, as well as the criteria for accelerated filers and large accelerated filers.[868]

We are interested in receiving input on how we should approach the eligibility criteria for using scaled disclosure. The FAST Act requires the Commission to revise Regulation S–K to further scale or eliminate disclosure requirements to reduce the burden on a variety of smaller issuers, including SRCs.[869] In response to this mandate, the staff is currently evaluating, among other things, the criteria to qualify as an SRC, and expects to make recommendations to the Commission. Consequently, we are not addressing the existing criteria in this release.

c. Request for Comment

264. In the context of registered offerings, the Commission has determined that certain types of issuers are unsuited for short-form registration or disclosure-related relief.[870] These issuers include reporting companies that are not current in their Exchange Act reports, issuers that may raise greater potential for abuse (such as blank check and shell companies)[871] and issuers that have violated the anti-fraud provisions of the federal securities laws. Are there types of registrants that would meet the current criteria for scaled disclosure but are unsuited for providing such disclosure? If so, which issuers and why? Should we exclude certain types of registrants from the use of scaled disclosure and if so, what should be the criteria (*e.g.,* failure to timely file, subject to enforcement actions for disclosure violations or fraud, being an "ineligible issuer" as defined under Rule 405 of the Securities Act or disqualified under Regulation A or Regulation D) and the time period of exclusion?

265. Should we tie eligibility for scaled disclosure to a certain proportion of companies, such as companies in the lowest one percent of total U.S. market capitalization or the lowest six percent of total U.S. market capitalization, as previously recommended by the ACSPC?[872]

266. Should we allow one or more categories of larger companies, such as companies with a longer reporting history or more readily available public information to benefit from scaled disclosure requirements as a means of reducing compliance costs?

267. The benefits of disclosure may be greater for smaller registrants because information asymmetries between investors and managers of smaller companies are typically higher than for larger, more seasoned companies with a large following.[873] However, disclosure

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[864] *See* Small Business Initiatives Adopting Release. In addition to the small business integrated disclosure system and forms, the Commission revised Regulation A to, among other things, raise the dollar limit to $5 million in a 12-month period and revised Rule 504 to, among other things, allow for receipt of freely transferable securities and remove the proscription on general solicitation. *Id.*

[865] *See* SRC Adopting Release. Several of the amendments the Commission adopted in the SRC Adopting Release originated in recommendations made by the Advisory Committee on Smaller Public Companies (ACSPC), which the Commission chartered in 2005 to assess the regulatory system for smaller companies. The ACSPC's recommendations included establishing a system of scaled securities regulation for "smaller public companies," which referred to registrants in the lowest six percent of total U.S. equity market capitalizations, and included: "microcap companies" which referred to registrants in the lowest one percent of total U.S. equity market capitalization and would have included registrants with capitalizations below approximately $128 million; and "smallcap companies," which referred to registrants in the next lowest five percent of total U.S. equity market capitalization and would have included registrants with capitalizations between approximately $128 million and $787 million. *See* Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission, Apr. 23, 2006, *available at http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf.*

[866] *See* SRC Adopting Release.

[867] The Annual SEC Government-Business Forum on Small Business Capital Formation ("Small Business Forum") has recommended revising the SRC definition to include a company with a public float of less than $250 million or a company with a public float of less than $700 million with annual revenues of less than $100 million. *See e.g., Final Report of the 2014 SEC Government-Business Forum on Small Business Capital Formation,* May 2015 ("2014 Forum Report"), *available at http://www.sec.gov/info/smallbus/gbfor33.pdf.*

Similarly, the Commission's Advisory Committee on Small and Emerging Companies ("ACSEC") recommended the Commission revise the SRC definition to include companies with a public float of up to $250 million to extend regulatory relief to a broader range of smaller public companies, including, among other things, the exemption from the requirement to provide an auditor attestation of the registrant's ICFR. Item 308(b) of Regulation S–K [17 CFR 229.308(b)]. Item 308(b) applies to accelerated filers and large accelerated filers, both of which definitions exclude issuers that that are eligible to use the SRC requirements in Regulation S–K. Exchange Act Rule 12b–2 [17 CFR 240.12b–2]. Because the definitions of accelerated filer and larger accelerated filer specify that they do not include registrants that are eligible to use the requirements for SRCs for their annual and quarterly reports, a change to the threshold for SRCs would extend this exemption even without a corresponding change to the threshold for accelerated filers.

The ACSEC also has recommended the Commission revise the definition of "accelerated filer" to include companies with a public float of $250 million or more, but less than $700 million, thereby exempting companies with public float between $75 million and $250 million from the requirement to provide an auditor attestation of the registrant's ICFR. *See e.g., Advisory Committee on Small and Emerging Companies Recommendations about Expanding Simplified Disclosure for Smaller Issuers,* Sept. 23, 2015 ("2015 ACSEC Recommendations"), *available at http://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf.*

[868] *See* S–K Study at 98 and 102–103. For a discussion of the overarching economic principles of the S–K Study, *see* Section II.C.

[869] Public Law 114–94, Sec. 72002(1), 129 Stat. 1312 (2015).

[870] *See* Securities Offering Reform Release.

[871] *See id.,* citing Penny Stock Definition for Purposes of Blank Check Rule, Release No. 33–7024 (Oct. 25, 1993) [58 FR 58099] (the Commission stated that Congress found blank check companies to be common vehicles for fraud and manipulation in the penny stock market, and concluded that the Commission's disclosure-based regulation and review of such offerings protects investors).

[872] *See supra* note 865.

[873] *See, e.g.,* R. Frankel and X. Li, *Characteristics of a firm's information environment and the information asymmetry between insiders and outsiders,* 37 J. Acct. Econ. 229, 229–259 (June

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requirements may impose disproportionate costs on smaller registrants, especially if these requirements impose fixed rather than variable costs.[874] To what extent are the costs imposed by our disclosure requirements fixed costs that do not scale with the size of a registrant?

2. Scaled Disclosure Requirements for Eligible Registrants

Registrants that qualify as an SRC or EGC are allowed to provide less detailed disclosure about their business operations and financial condition and to limit the number of periods for which disclosure is required.[875] An SRC may limit the description of the development of its business under Item 101(h) of Regulation S–K to the last three years rather than the five years required of other registrants. The business description should include the registrant's form and year of organization, any bankruptcy proceedings, any material reclassification, merger, sale or purchase of assets outside the ordinary course of business and a description of the business. The disclosure required in the description of business for SRCs is less detailed than that required for other reporting companies and does not require information about seasonality, working capital practices, backlog information and certain material government contracts.[876] The scaled requirements do, however, call for information not specifically required for other reporting companies, such as the need for government approval of principal products and services.[877]

SRCs also are required to provide only two years of audited financial statements[878] rather than the three years required of other companies.[879] To the extent a SRC presents only two years of financial statement information, they also are permitted under Item 303 of Regulation S–K to provide MD&A for only these two years.[880]

Not all EGCs qualify as SRCs. EGCs are only required to provide two years of audited financial statements in an initial public offering of common equity securities and may limit their MD&A to only those audited periods presented in the financial statements.[881] In interpretive guidance, the Division has stated that in any other offering or in an Exchange Act annual report or registration statement, an EGC that is not an SRC is required to provide three years of audited financial statements, except the registrant is not required to include financial statements for any periods prior to the earliest period presented in its initial public offering of common equity securities.[882] In addition, EGCs may take advantage of an extended transition period for complying with new or revised financial accounting standards.[883]

SRCs are not required to provide certain line-item requirements in Regulation S–K, including Item 201(e) (Market price of and dividends on the registrant's common equity and related stockholder matters—Performance Graph),[884] Item 301 (Selected Financial Data),[885] Item 302 (Supplementary Financial Data),[886] Item 303(a)(5) (contractual obligations table),[887] Item 305 (Quantitative and Qualitative Disclosures about Market Risk),[888] Item 308(b) (Internal Control over Financial Reporting—auditor's attestation report)[889] and Item 503(c) (Risk Factors).[890] Scaled disclosure requirements under these items differ slightly for EGCs. For example, an EGC is permitted to limit the selected financial data it includes in a registration statement under Item 301 to those periods for which audited financial statements are included in the registration statement. For periodic reports, an EGC is not required to

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2004). *See also,* L. Cheng, S. Liao, and H. Zhang, *The Commitment Effect versus Information Effect of Disclosure—Evidence from Smaller Reporting Companies,* 88 Acct. Rev. 1239, 1239–1263 (2013).

[874] Empirical evidence suggests the imposition of additional disclosure requirements in the past has imposed disproportionate costs on smaller registrants relative to larger registrants. *See supra* note 169.

[875] SRCs and EGCs may take advantage of additional scaled disclosure requirements and other accommodations, such as reduced executive compensation disclosure under Item 402(n) through (r) of Regulation S–K [17 CFR 229.402(n) through (r)] that we do not discuss in detail here, as they are beyond the scope of this release.

[876] Item 101(c)(1)(v), (vi), (viii) and (ix) of Regulation S–K [17 CFR 229.101(c)(1)].

[877] *See, e.g.,* Item 101(h)(4)(viii) of Regulation S–K [17 CFR 229.101(h)].

[878] Rule 8–02 of Regulation S–X. [17 CFR 210.8–02].

[879] Article 3 of Regulation S–X requires: Audited balance sheets as of the end of each of the two most recent fiscal years; audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet; and an analysis of changes in stockholders' equity for each period for which an income statement is required. Rules 3–01, 3–02, and 3–04 of Regulation S–X [17 CFR 210.3–01; 17 CFR 210.3–02; 17 CFR 210.3.04].

[880] Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[881] Public Law 112–106, Sec. 102(b)–(c), 126 Stat. 306 (2012). One study, however, indicated that only fifty-nine percent of EGCs provided the minimum financial statement disclosures required by the JOBS Act and voluntarily provided more disclosure. *See* Ernst & Young LLP, *The JOBS Act: 2015 Mid-Year Update,* (Sept. 2015), *available at http://www.ey.com/Publication/vwLUAssets/JOBSAct_2015MidYear_CC0419_16September2015/$FILE/JOBSAct_2015MidYear_CC0419_16September2015.pdf.* While the JOBS Act permits EGCs to limit their MD&A to only those audited periods presented in its financial statements, Division staff has provided interpretive guidance that Section 102(c) does not permit an EGC to comply with the SRC provisions of Item 303. An EGC that is not an SRC is therefore required to include the contractual obligations table required by Item 303(a)(5). *See* Question 41, Jumpstart Our Business Startups Act Frequently Asked Questions, Generally Applicable Questions on Title I of the JOBS Act, (May 3, 2012), *available at https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.* Additionally, a non-SRC EGC must provide three years of audited financial statements in an Exchange Act registration statement or annual report, and therefore its MD&A in such filing must cover the same three-year period. *See* Division of Corporation Finance Financial Reporting Manual, Section 10220.1.

[882] *See* Questions 30 and 48, Jumpstart Our Business Startups Act Frequently Asked Questions, Generally Applicable Questions on Title I of the JOBS Act, (May 3, 2012), *available at https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.*

Section 71003 of the FAST Act amended Section 102 of the JOBS Act to allow an EGC that is filing a registration statement (or submitting a draft registration statement for confidential review) under Section 6 of the Securities Act on Form S–1 or Form F–1 to omit financial information for historical periods otherwise required by Regulation S–X if it reasonably believes the omitted information will not be required in the filing at the time of the contemplated offering, so long as the issuer amends the registration statement prior to distributing a preliminary prospectus to include all financial information required by Regulation S–X at the time of the amendment. This provision took effect 30 days after the date of enactment of the FAST Act. Section 71003 also directs the Commission to revise the general instructions to Form S–1 and Form F–1 to reflect this self-executing change. In addition, Section 84001 of the FAST Act requires the Commission to revise Form S–1 to permit an SRC to incorporate by reference into its registration statement any documents filed by the issuer subsequent to the effective date of the registration statement. Public Law 114–94, Sec. 71003, 129 Stat. 1312 (2015).

We recently adopted interim final rules to implement Sections 71003 and 84001 of the FAST Act. *See* Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S–1 For Smaller Reporting Companies, Release No. 33–10003 (Jan. 13, 2016) [81 FR 2743 (Jan. 19, 2016)] ("FAST Act Interim Rules Release").

[883] 15 U.S.C. 77g(a)(2)(B).

[884] Instruction 6 to Item 201(e) of Regulation S–K [17 CFR 229.201(e)].

[885] Item 301(c) of Regulation S–K [17 CFR 229.301(c)].

[886] Item 302(c) [17 CFR 229.302(c)].

[887] Item 303(d) of Regulation S–K [17 CFR 229.303(d)].

[888] Item 305(e) of Regulation S–K [17 CFR 229.305(e)]. Although SRCs are not required to provide the information required by this item, the adopting release notes that "if market risk represents a material known risk or uncertainty, [SRCs], like other registrants, will continue to be required to discuss those risks and uncertainties to the extent required by Management's Discussion and Analysis." *See* Disclosure of Market Risk Sensitive Instruments Release.

[889] Non-accelerated filers, a category that includes SRCs, are not subject to the requirements of Item 308(b) (attestation report of the registered public accounting firm). Item 308(b) of Regulation S–K [17 CFR 229.308(b)].

[890] Item 1A, Part I of Form 10–K and Item 1A, Part II of Form 10–Q.

provide the selected financial data for any periods earlier than those for which financial statements were presented in the IPO.[891] EGCs are also not required to provide auditor attestations of ICFR and, accordingly, are not subject to Item 308(b).[892]

The following table summarizes the scaled disclosure accommodations available to EGCs and SRCs for periodic reports as well as certain other filings.[893]

Scaled disclosure requirement	Emerging growth company	Smaller reporting company
Audited Financial Statements Required	• 2 years in a Securities Act registration statement for an IPO of common equity. • 3 years in an IPO of debt securities. • 3 years in an annual report or Exchange Act registration statement, unless the company is also an SRC.	• 2 years.
Description of Business (Item 101)	Standard disclosure requirements apply	• Development of its business during the most recent three years, including: ○ form and year of organization; ○ bankruptcy proceedings; ○ material reclassification, merger, sale or purchase of assets; and ○ description of the business. • Not required: ○ seasonality; ○ working capital practices; ○ backlog; or ○ government contracts. • Names of principal suppliers. • Royalty agreements or labor contracts. • Need for government approval of principal products and services. • Effect of existing or probable governmental regulations.
Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters (Item 201).	Standard disclosure requirements apply	Not required to provide the stock performance graph.
Selected Financial Data (Item 301)	Not required to present selected financial data for any period prior to the earliest audited period presented in initial registration statement.	Not required.
Supplementary Financial Data (Item 302)	Not required until after IPO	Not required.
MD&A (Item 303)	May limit discussion to those years for which audited financial statements are included.	• May limit discussion to those years for which audited financial statements are included. • Not required to comply with contractual obligations table requirements in 303(a)(5).
Quantitative and Qualitative Disclosures about Market Risk (Item 305).	Standard disclosure requirements apply	Not required, but related disclosure may be required in MD&A.
Extended Transition for Complying with New or Revised Accounting Standards.	• May elect to defer compliance with new or revised financial accounting standards until a company that is not an "issuer"[894] is required to comply with such standards. • Any decision to forego the extended transition period is irrevocable.	Standard disclosure requirements apply.
Internal Control over Financial Reporting (Item 308).	• Not required to provide attestation report of the registered public accounting firm. • Not exempt from Item 308(a), but newly public company is not required to comply until it either has filed or has been required to file an annual report for the prior fiscal year.	Non-accelerated filers, a category that includes SRCs, are not required to provide an attestation report of the registered public accounting firm.
Executive Compensation Disclosure (Item 402)	• Permitted to follow requirements for SRCs[895]. • Exempt from principal executive officer pay ratio disclosure.	• 2 years of summary compensation table information, rather than 3. • Limited to principal executive officer, two most highly compensated executive officers and up to two additional individuals no longer serving as executive officers at year end.[896] • Not required: ○ compensation discussion and analysis;

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[891] Public Law 112–106, Sec. 102(b), 126 Stat. 306 (2012). Title I of the JOBS Act provided EGCs with a variety of scaled disclosure and other accommodations. These provisions were effective upon enactment of the JOBS Act without rulemaking by the Commission.

[892] *Id.* at Sec. 103 (amending Section 404(b) of the Sarbanes-Oxley Act [Pub. L. 107–204, Sec. 404(b) 116 Stat. 745 (2002)]).

[893] Many of the scaled disclosure accommodations apply to filings other than periodic reports. Some of these filings are identified in the table. Though not within the scope of this release, this information is included here to provide additional context.

Scaled disclosure requirement	Emerging growth company	Smaller reporting company
		○ grants of plan-based awards table; ○ option exercises and stock vested table; ○ change in present value of pension benefits; ○ CEO pay ratio; ○ compensation policies as related to risk management; or ○ pension benefits table. • Description of retirement benefit plans.
Certain Relationships and Related Party Transactions (Item 404).	Standard disclosure requirements apply	• Lower threshold to disclose related party transactions. • Not required to disclose procedures for review, approval or ratification of related party transactions. • Additional requirement to disclose certain controlling entities. • Required to disclose related party transactions not only since the beginning of last fiscal year but also for the preceding fiscal year.[897]
Corporate Governance (Item 407)	Standard disclosure requirements apply	• Not required to disclose whether it has an audit committee financial expert until its second annual report following IPO.[898] • Exempt from requirements to disclose compensation committee interlocks and insider participation and to provide a compensation committee report.[899]
Risk Factors (Item 503(c))	Standard disclosure requirements apply	Not required in periodic reports.[900]
Ratio of Earnings to Fixed Charges (Item 503(d)) [901].	Required for same number of years for which it provides selected financial data disclosures [902].	Not required.[903]

a. Comments Received

S–K Study. One commenter encouraged the Commission not to issue guidance or rules to increase the scope of companies eligible for EGC status or to defer further the application of internal control requirements, such as the requirement to provide an auditor attestation report, for EGCs that outgrow their EGC status.[904]

Two commenters suggested that EGCs should be exempt from Item 305 disclosure.[905] These commenters specified that companies that have not yet reached the revenue or market capitalization thresholds that would disqualify them from EGC status are unlikely to face meaningful market risks. These commenters also recommended eliminating the requirement in Item 101(c) to disclose the amount of backlog orders believed to be firm for EGCs, stating the concept of backlog is not a "meaningful metric" for most of these companies. In addition, these commenters noted that the threshold for agreements that are "immaterial in amount or significance" in Item 601(b)(10)(ii)(A) is too low for EGCs, because they often enter into agreements with parties that have a five percent or greater ownership of the company.[906]

Disclosure Effectiveness Initiative. One commenter generally supported the concept of scaled disclosure requirements noting that smaller companies face challenges when preparing annual reports.[907] Another commenter expressed concerns with a differential disclosure regime for different sized entities, stating that investors will factor the differences into their price determinations (*i.e.,* they will price the lack of transparency, clarity and comparability in what may be perceived to be lower-quality requirements).[908] One commenter recommended that requirements related exclusively to SRCs should be grouped together under separate headings in Regulation S–K.[909]

b. Discussion

In simplifying disclosure requirements for small businesses, we seek to facilitate capital formation without compromising investor protection. Previous Commission efforts in this area have focused on reducing requirements that impede the formation and growth of small businesses and,

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[894] An "issuer" is defined in Section 2(a) of the Sarbanes-Oxley Act to mean an issuer whose securities are registered under Exchange Act Section 12, that is required to file reports under Securities Act Section 15(d), or that has filed a registration statement that has not yet become effective and that it has not withdrawn. Public Law 107–204, Sec. 2(a), 116 Stat. 747 (2002).

[895] Public Law 112–106, Sec. 102(c), 126 Stat. 306 (2012).

[896] Item 402(m)(2) of Regulation S–K [17 CFR 229.402(m)(2)]. Companies that are not SRCs must provide disclosure for the principal executive officer, principal financial officer, three most highly paid executive officers and up to two additional individuals no longer serving as executive officers. Item 402(a)(3) of Regulation S–K [17 CFR 229.402(a)(3)].

[897] Item 404(d) of Regulation S–K [17 CFR 229.404(d)].

[898] Item 407(g)(1) of Regulation S–K [17 CFR 229.407(g)(1)].

[899] Item 407(g)(2) of Regulation S–K [17 CFR 229.407(g)(2)].

[900] Item 1A of Form 10–K [17 CFR 249.310]; Item 1A of Form 10–Q [17 CFR 249.308a]. SRCs also are not required to provide the information required by Item 503(c) of Regulation S–K in Exchange Act registration statements on Form 10 [17 CFR 249.210].

[901] The staff is separately considering Item 503(d) of Regulation S–K in developing recommendations for the Commission for potential changes to update or simplify certain disclosure requirements. For a description of this project, *see* Section I.

[902] *See* Jumpstart Our Business Startups Act Frequently Asked Questions, Generally Applicable Questions on Title I of the JOBS Act, Question 27 (May 3, 2012), *available at https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.*

[903] Item 503(e) of Regulation S–K [17 CFR 229.503(e)].

[904] *See* CII.

[905] *See* Silicon Valley; M. Liles.

[906] *Id.*

[907] *See* UK Financial Report Council.

[908] *See* CFA Institute.

[909] *See* Shearman.

given the nature of these smaller companies, the Commission determined are not necessary for the protection of investors.[910]

The disclosure items formerly required by Form S–18 generally were consistent with the corresponding items in Form S–1. However, Form S–18 required less extensive narrative disclosure and simplified financial statements, consistent with Regulation A. Based on input from public hearings and written comments, the Commission sought to require in Form S–18 only the information that normally would be applicable to those small businesses expected to use the form. Accordingly, the Commission reduced or eliminated requirements that it determined were particularly burdensome to small businesses and tended to elicit information that, in the small business context, was less relevant or less beneficial to investors.[911]

For example, Form S–18 did not use the description of business requirement from Regulation S–K. Instead, Form S–18 provided smaller issuers the flexibility to discuss other business-related disclosure, such as their dependence on a limited number of customers or suppliers (including suppliers of raw materials or financing) and cyclicality of their industry, only if it would have "a material impact upon the registrant's future financial performance." [912] In addition, Form S–18 required two years of audited financial statements prepared in accordance with U.S. GAAP,[913] similar in content to those required by Regulation A at the time,[914] as opposed to the more detailed requirements in Form S–1. In adopting Form S–18, the Commission stated its belief that the simplified financial statements and schedules would result in costs savings to registrants while providing investors adequate information about these smaller offerings.[915]

Under Regulation S–B, the narrative disclosure requirements generally paralleled those in Regulation S–K at the time, except that Regulation S–B incorporated the simplified requirements of Form S–18. The financial information required by Regulation S–B was substantially similar to that required by Form S–18, except that Regulation S–B also addressed interim financial statement requirements.[916]

In 2007, the Commission eliminated the separate Regulation S–B disclosure requirements and instead provided scaled disclosure requirements in Regulation S–K and Regulation S–X.[917] For example, new paragraph (h) to Item 101 of Regulation S–K set forth the alternative disclosure standards for smaller companies that had appeared in Item 101 of Regulation S–B.[918] The Commission included an index in Item 10 to identify the Items of Regulation S–K containing scaled disclosure requirements for SRCs.[919]

In response to comment letters and the recommendation of the ACSPC, the Commission revised the requirements in Regulation S–X to require two years of comparative audited balance sheet data for SRCs, rather than the one year previously required by Regulation S–B.[920] The Commission noted that the additional balance sheet data would provide a more meaningful presentation for investors without a significant additional burden on SRCs, because the earlier year data would be readily available for purposes of preparing the otherwise required statements of income, cash flows and changes in stockholders' equity.[921]

Unlike Regulation S–B, which required small business issuers to comply with the entire Regulation S–B disclosure regime, the amendments to Regulation S–K adopted in 2007 permitted SRCs to comply selectively with the scaled disclosure requirements on an item-by-item basis.[922] The Commission intended the amendments to eliminate redundancies and provide a more streamlined disclosure system for SRCs.[923]

In recent years, the Small Business Forum has recommended that the Commission:

- Eliminate or significantly reduce the extent of XBRL tagging requirements for SRCs; and
- permit SRCs to exclude line item-responsive disclosures from their periodic reports if such disclosures are not material.[924]

Similarly, in the last few years, the ACSEC has recommended that the Commission:

- exempt SRCs from XBRL tagging requirements;[925]
- exempt SRCs from filing immaterial attachments to material contracts;[926] and
- when adopting new disclosure rules, consider whether such rules place a disproportionate burden on SRCs in terms of the cost of, and time spent on, compliance with such requirements, and if so, provide for exemptions from or phase-in periods for such new rules for SRCs.[927]

In 2015, the FAST Act directed the Commission to revise Regulation S–K to further scale or eliminate requirements in order to reduce the burden on EGCs, accelerated filers, SRCs, and other smaller issuers, while still providing all material information to investors.[928] Given these recommendations and the recent legislative directive, we are seeking public input on whether we should expand or eliminate any of our scaled disclosure requirements to further ease the compliance burden for smaller registrants and, if so, how we could do so without sacrificing investor protection.

c. Request for Comment

268. Are there any disclosure requirements for which scaling is not appropriate?

269. How should we assess whether scaled disclosures are effective at

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[910] *See, e.g.,* Form S–18 Release and Small Business Initiatives Proposing Release.

[911] *See* Form S–18 Release.

[912] Form S–18 Release at 21570; *See also* 1977 Regulation S–K Adopting Release.

[913] Specifically, Form S–18 required: (1) A consolidated balance sheet as of a date within ninety days prior to the date of filing; and (2) consolidated statements of income, source and application of funds, and other stockholders' equity for the two fiscal years prior to the date of filing. *See* Form S–18 Release.

[914] Until 2015, Regulation A required financial statements to be prepared in accordance with U.S. GAAP. In 2015, the Commission revised Regulation A to allow Canadian issuers to prepare their financial statements in accordance with either U.S. GAAP or International Financial Reporting Standards. *See* 2015 Regulation A Release.

[915] *See* Form S–18 Release.

[916] *See* Small Business Initiatives Adopting Release. *See also supra* note 913.

[917] *See* SRC Adopting Release.

[918] Item 101(h) of Regulation S–K [17 CFR 229.101(h)].

[919] Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

[920] *See* SRC Adopting Release.

[921] *See id.*

[922] *Id.* Where a disclosure requirement applicable to SRCs was more stringent than the corresponding requirement for other registrants, SRCs were required to comply with the more stringent standard. The SRC Adopting Release identified Item 404 of Regulation S–K as the only instance where the requirements applicable to SRCs could be more stringent than the larger company standard.

[923] *Id.*

[924] *See, e.g.,* 2014 Forum Report; *Final Report of the 2013 SEC Government-Business Forum on Small Business Capital Formation,* June 2014, *available at http://www.sec.gov/info/smallbus/gbfor32.pdf*; *31st Annual SEC Government-Business Forum on Small Business Capital Formation Final Report,* Nov. 15, 2012, *available at http://www.sec.gov/info/smallbus/gbfor31.pdf.*

[925] *See* 2015 ACSEC Recommendations; *Advisory Committee on Small and Emerging Companies Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies,* Feb. 1, 2013, ("2013 ACSEC Recommendations"), *available at http://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf.*

[926] *See* 2015 ACSEC Recommendations; 2013 ACSEC Recommendations.

[927] *See* 2013 ACSEC Recommendations.

[928] Public Law 114–94, Sec. 72002(1), 129 Stat. 1312 (2015).

achieving the Commission's mission of protecting investors, maintaining fair and orderly markets and facilitating capital formation?

270. Are there disclosure requirements that are particularly beneficial for investors in smaller registrants? For example, are there disclosure requirements that elicit information that is not as readily available outside of smaller registrants' filings although this information might be readily available outside of a filing for larger or more seasoned companies? If so, which requirements and why? Does the information elicited from smaller registrants by these disclosure requirements appropriately consider the costs of these requirements to these smaller registrants?

271. Are there additional item requirements that we should consider scaling for SRCs? Are there any current scaled disclosure requirements that we should scale further or eliminate entirely?

272. Should we allow EGCs to take advantage of the scaled disclosure requirements currently available only to SRCs, such as the less extensive requirements for the description of business set forth in Item 101(h) of Regulation S–K or the elimination of the contractual obligations table available under Item 303(d) of Regulation S–K?

273. Should we reorganize Regulation S–K, as recommended by one commenter,[929] to group the requirements related exclusively to SRCs together under separate headings? Why or why not?

274. Should we eliminate or reduce the XBRL tagging requirements for SRCs? What, if any, XBRL tagging should we require of SRCs?

275. Should we permit SRCs to exclude disclosure that would be responsive to specific items in Regulation S–K from their periodic reports if such disclosures are not material? Should we permit SRCs to omit all such disclosure or should we limit this accommodation to specific items in Regulation S–K?

276. What types of investors or audiences would be affected by further scaling? How?

277. Do our scaled disclosure requirements appropriately consider the costs and benefits of these requirements to smaller registrants and investors in these registrants? What savings (or costs avoided) for registrants, including the administrative and compliance costs of preparing and disseminating disclosure, would likely arise from scaling additional item requirements? Please provide quantifications of savings and costs avoided where possible.

3. Frequency of Interim Reporting

The federal securities laws have required registrants to provide annual reports since 1934.[930] In 1955, the Commission adopted rules requiring registrants to file semi-annual reports on Form 9–K.[931] In the proposing release for Form 9–K, the Commission stated that "consideration should be given to requiring reports of certain significant information more frequently than annually."[932] Investors and the securities industry supported the semi-annual reporting proposal, while registrants opposed it.[933]

The Commission has required quarterly reporting since 1970, when it adopted Form 10–Q to replace the semi-annual report on Form 9–K.[934] However, prior to adopting Form 10–Q, more than seventy percent of public companies produced quarterly reports, partially in response to exchange listing standards.[935] As adopted in 1970, Form 10–Q required summarized financial information and profit and loss information in more detail than was required by Form 9–K, including data on earnings per common share. In addition, information on a registrant's capitalization and stockholders' equity was also required.[936]

In 1981, in connection with its integrated disclosure initiatives, the Commission revised Form 10–Q to "build upon the annual reporting system to ensure meaningful disclosure on a continuous basis by making quarterly reporting a mechanism to update the annual report."[937] The amendments were intended to complement the previously adopted revisions relating to annual reporting, and included the addition of management's discussion and analysis of interim financial information.[938] Other significant additions to Form 10–Q over time have included quantitative and qualitative disclosures about market risk,[939] disclosure controls and procedures,[940] and risk factors.[941]

a. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. One commenter suggested that semiannual financial reporting may be sufficient for SRCs that are not listed on a national exchange, noting that scaling the requirement in this way would align the treatment of SRCs with that of comparable companies that are now able to rely on the exemption under Regulation A.[942]

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[929] *See* Shearman.

[930] As enacted, Section 13 of the Exchange Act required listed companies to furnish annual reports, and if the Commission required, quarterly reports. John Hanna, *The Securities Exchange Act as Supplementary of the Securities Act,* 4 Law & Contemp. Probs. 256, 256–268 (1937). Exchange Act reporting requirements were extended to non-listed registrants with the enactment of Section 12 of the Exchange Act in 1964. *See supra* note 14.

[931] *See* Semi-Annual Reports, Release No. 34–5189 (June 23, 1955) [20 FR 4816 (July 7, 1955)]. The Form 9–K was filed once a year, 45 days after the end of the first half the registrant's fiscal year. The semi-annual report required disclosure with respect to sales and gross revenues, net income before and after taxes, extraordinary and special items, and charges and credits to earned surplus. Form 9–K did not require formal statements of profit and loss or earned surplus and was not required to be certified.

[932] Notice of Proposed Rule Making, Semi-Annual Reports, Release No. 34–5129 (Jan. 27, 1955) [20 FR 771 (Feb. 4, 1955)] at 772.

[933] *See* Philip Augar, *For Markets There is Such a Thing as Too Much Information,* Financial Times, Feb. 1, 2015 ("Augar").

[934] *See* Quarterly Reporting Form, Release No. 34–9004 (Oct. 28, 1970) [35 FR 17537 (Nov. 14, 1970)] ("Form 10–Q Adopting Release"). Form 10–Q was adopted in response to the Wheat Report. *See* Wheat Report at 357–58 ("More and more publicly-held corporations are releasing condensed quarterly financial information. Both the New York and American Stock Exchanges require publication of such information by all listed companies, although the standards which they set for such information are minimal . . . The Study carefully examined a significant sample of quarterly financial reports and releases provided by the two exchanges. It was readily apparent . . . that they varied from extremely useful to extremely poor and uninformative . . . It was concluded that a useful advance in disclosure policy could be achieved by developing standards for quarterly financial reporting.").

[935] *See* Arthur Kraft et al., *Real Effects of Frequent Financial Reporting* (Cass Business School, City University London, Working Paper Series No. 26, Aug. 2014) at 2 ("Kraft et al."). *See also* Marty Butler et al., *The effect of reporting frequency on the timeliness of earnings: The cases of voluntary and mandatory interim reports,* 43 J. Acct. Econ. 181, 185 (2007).

The New York Stock Exchange began requiring annual reports in 1914, and by 1923, over twenty-five percent of NYSE-listed companies were publishing quarterly reports with another eight percent publishing semi-annual reports. By 1933, over sixty percent of NYSE-listed companies were publishing quarterly reports and twelve percent published semi-annual reports. *See* James E. Davis, *Corporate Disclosure through the Stock Exchanges,* Apr. 24, 1999 (unpublished paper) (on file with Harvard Law School and *available at http://cyber.law.harvard.edu/rfi/papers/disclose.pdf).*

The Form 10–Q proposing release also noted that "[m]any publicly held companies are releasing condensed quarterly financial information, and the major stock exchange[s] require publication of such information by listed companies." Form 10–Q For Disclosure of Financial Information, Release No. 34–8683 (Sept. 1969) [34 FR 14239 (Sept. 10, 1969)].

[936] *See* Form 10–Q Adopting Release.

[937] *See* New Interim Financial Information Provisions and Revision of Form 10–Q for Quarterly Reporting, Release No. 33–6288 (Feb. 9, 1981) [46 FR 12480 (Feb. 17, 1981)] ("New Interim Financial Information Release") at 12481.

[938] *Id.*

[939] *See* Disclosure of Market Risk Sensitive Instruments Release.

[940] *See* Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 33–8124 (Aug. 29, 2002) [67 FR 57276 (Sept. 9, 2002)].

[941] *See* Securities Offering Reform Release.

b. Discussion

The Commission adopted quarterly reporting with the purpose of ensuring meaningful disclosure to investors on a continuous basis.[943] The Wheat Report concluded that one of the principal omissions in the Exchange Act reporting system was the absence of a quarterly summary of basic financial information prepared using reasonably specific standards.[944] The Wheat Report also concluded that "a regular, quarterly report would be more useful than the current reports on Form 8–K, which were filed irregularly." [945] Accordingly, quarterly reports were intended to provide a mechanism to update the information in an annual report on Form 10–K in a more consistent manner and on a regular basis.

The value of quarterly financial reporting has been the subject of debate.[946] Opponents of quarterly reporting argue that frequent financial reporting may lead management to focus on short-term results to meet or beat earnings targets rather than on long-term strategies.[947] Consequently, some have argued that quarterly reports should be discontinued [948] or made voluntary [949] in the United States.[950]

On the other hand, some advocates of frequent reporting, typically on a quarterly basis, point out that greater frequency improves the timeliness of earnings and reduces information asymmetry between managers and investors.[951] Others are skeptical of the benefits of eliminating quarterly reporting requirements.[952] According to one survey of institutional investors, fifty-eight percent of investors preferred to receive information on a quarterly basis to confirm or reframe expectations.[953] Some advocates have expressed concern that eliminating quarterly reporting requirements would result in inconsistent reporting intervals across registrants and potentially, from period to period.[954] Meanwhile, others argue that delaying a report by a few months would not fix the problems of short-termism.[955]

The value of quarterly reporting may vary by industry or by the size of the registrant. For example, investors in smaller, capital-intensive technology companies may focus more on significant business or technology developments than on quarterly financial reports.[956] Similarly, the costs of more frequent reporting may impose a disproportionate burden on smaller or less capitalized registrants.[957] At the same time, smaller registrants may be more volatile and quarterly reporting may provide more timely disclosure of performance issues.[958] Additionally, because smaller, capital-intensive companies may need greater or more frequent access to capital markets, more frequent reporting may provide greater investor confidence and a lower cost of capital for these companies.[959]

c. Request for Comment

278. Do investors, registrants and the markets benefit from quarterly reporting? What are the benefits and costs to investors, registrants and the markets from the current system of quarterly reporting? Should we revise or eliminate our rules requiring quarterly reporting? Why or why not?

279. Should the reporting requirements be different for different types of registrants? Should we consider permitting SRCs to file periodic reports on a less frequent basis, such as semi-annually? If so, what disclosures should we require in those reports?

280. Should we allow other categories of registrants to file periodic reports on a less frequent basis, such as semi-annually? If so, which categories of registrants should be permitted to file less frequently, and what disclosure should be required?

281. Should we require certain registrants to file periodic reports on a more frequent basis such as monthly?

282. Should we consider reducing the level of disclosure required in the quarterly reports for the first and third quarters? If so, what disclosure should we require in these abbreviated quarterly reports? Should the disclosure requirements for SRCs be the same as those that apply to other categories of registrants?

283. Do quarterly reporting obligations influence the strategic goals and timelines of registrants' management? Do quarterly reporting

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[942] *See* Ernst & Young 2.

[943] *See* New Interim Financial Information Release.

[944] *See* Wheat Report at 332–334.

[945] *See id.* at 332.

[946] The debate over quarterly reporting sometimes includes concerns of "short-termism." The discussion here is not intended to capture all aspects of, or issues raised in, the short-termism debate.

For a list of recent publications on short-termism, *see* Therese Strand, *Re-Thinking Short-Termism and the Role of Patient Capital in Europe: Perspectives on the New Shareholder Rights Directive,* 22 Colum. J. Eur. L. 1, footnote 26 (2015) at footnote 26.

[947] *See* Kraft et al.

[948] *See* Martin Lipton, *Legal & General Calls for End to Quarterly Reporting,* Aug. 19, 2015, *available at http://www.wlrk.com/webdocs/wlrknew/AttorneyPubs/WLRK.24734.15.pdf.* The author suggests that the Commission should consider the UK's move toward discontinuing quarterly reporting in pursuing disclosure reform initiatives. He notes that Legal & General Investment Management, a global investment firm with more than £700 billion in assets under its management, contacted the boards of London Stock Exchange's 350 largest companies to support the discontinuation of quarterly reporting. According to the author, Legal & General emphasized that short-term reporting "is not necessarily conducive to building a sustainable business" and "adds little value for companies that are operating in long-term business cycles." *See also* David Benoit, *Time to End Quarterly Reports, Law Firm Says,* The Wall Street Journal, Aug. 19, 2015, *available at; http://www.wsj.com/articles/time-to-end-quarterly-reports-law-firm-says-1440025715.*

[949] *See* Augar.

[950] Other jurisdictions have eliminated quarterly reporting. For example, in the European Union, the requirement for issuers traded on a regulated market to publish financial information more frequently than annual financial reports and semi-annual reports was abolished in 2013. *See* Directive 2013/50/EU of the European Parliament and of the Council, Oct. 22, 2013, *available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0050.* Following implementation, E.U. member states generally will require only annual and semi-annual reports. However, an E.U. member state may require issuers to publish additional periodic financial information if the requirement does not constitute a significant financial burden and if the required information is proportionate to the factors that contribute to investment decisions. *Id.*

[951] *See* Kraft et al.

[952] *See* Ronald Barusch, *Dealpolitik: Attention CFOs—Don't Get Your Hopes Up for an End to Quarterly Reporting,* The Wall Street Journal Blog, Aug. 20, 2015 ("Barusch"), *available at http://blogs.wsj.com/moneybeat/2015/08/20/dealpolitik-attention-cfos-dont-get-your-hopes-up-for-an-end-to-quarterly-reporting* ("Eliminating quarterly reporting won't make investors any less interested in quarterly results. Analysts and professional investors will do their best to figure out what the quarterly would have shown even if companies don't disclose it themselves.").

[953] *See* Ernst & Young, *Right team, right story, right price,* (2013), *available at http://www.ey.com/Publication/vwLUAssets/Investment_appetite_up_for_IPOs_among_institutional_investors/$FILE/Institutional_Investor_Survey.pdf.*

[954] *See, e.g.,* Barusch (expressing concerns that eliminating the quarterly report requirement could allow public companies to "provide just what they want the public to know in whatever intervals they choose," whereas the "current rules require quarterly GAAP-compliant financial information in a standard format").

[955] *See* Barry Ritholtz, *Wrong Fix for Short-Term Corporate Thinking,* Bloomberg, Aug. 20, 2015, *available at http://www.bloombergview.com/articles/2015–08–20/wrong-fix-for-short-term-corporate-thinking*; and Mark J. Roe, *The Imaginary Problem of Corporate Short-Termism,* The Wall Street Journal, Aug. 17, 2015, *available at www.wsj.com/articles/the-imaginary-problem-of-corporate-short-termism-1439853276.*

[956] *See* Transcript, Meeting of SEC Advisory Committee on Small and Emerging Companies (Sept. 23, 2015) at 64–65 (noting that some biotechnology companies may not trade on their financial quarterly reporting but rather, may trade on their fundamental clinical development and regulatory events). The ACSEC discussed issues raised by quarterly reporting for small and emerging companies at its September 2015 meeting but did not issue formal recommendations. *See id.*

[957] *See id.* at 60–61.

[958] *See id.* at 74.

[959] *See id.* at 87–90.

obligations help or hinder long-term decision making by registrants?

284. What types of investors or audiences are most likely to value the information that registrants disclose in quarterly reports?

285. What are the savings (or costs avoided) for registrants, including the administrative and compliance costs of preparing and disseminating disclosure, that would likely arise from revising or eliminating our rules requiring quarterly reporting? Please provide quantifications of savings and costs avoided where possible.

V. Presentation and Delivery of Important Information

Given the volume, complexity and sophistication of corporate disclosures, the presentation and delivery of information may play a significant role in investors' ability to access and use important disclosure. The Commission's own disclosure system creates some fragmentation of information, in both location and time. Registrants provide disclosure on Forms 10–K, 10–Q, and 8–K, which are filed on EDGAR. Registrants also can provide broad, non-exclusionary distribution of information under Regulation FD either on Form 8–K or through press releases, conference calls, or Web sites.[960] In addition, registrants may use tools such as cross-referencing and incorporation by reference to reduce repetitive disclosure and present more streamlined information in each filing. As different investors and third parties likely use disclosures in different ways, the benefits of different presentation and delivery approaches may vary.

The S–K Study recommended that the staff consider ways to present information that would improve the readability and navigability of disclosure. It also recommended that the staff explore methods to discourage repetition and disclosure of immaterial information.[961] Additionally, the FAST Act requires the Commission to issue regulations permitting registrants to submit a summary page in their Form 10–K only if each item on the summary page includes a cross-reference (by electronic link or otherwise) from each item in the summary to the related material in the Form 10–K.[962]

In light of the S–K Study's recommendations and the recent FAST Act mandate, we are seeking public input on how our rules can facilitate the readability and navigability of disclosure documents. We are seeking public input on the use of tools such as cross-referencing, incorporation by reference, hyperlinks and registrant Web sites as well as other ways we could change our disclosure requirements to improve the readability and navigability of registrant filings.[963] Given the various types of filings and other delivery methods available to registrants, we also are seeking input on where information should be provided directly and in full, and where references to the location of the information may suffice. Additionally, we are interested in whether any required disclosures would be more effective if we required registrants to present them in a specified format, such as a tabular or graphic presentation, to layer the disclosures by means of a summary or overview, or to provide certain information as structured data.

A. Cross-Referencing

In lieu of presenting duplicative disclosure, our rules generally permit registrants to cross-reference to information in one section of a document to satisfy a disclosure requirement in another section of the document. Several items in Regulation S–K specify that a company may include in its financial statements or related notes a cross-reference to certain information in the non-financial statement disclosure or, conversely, a company may cross-reference from the disclosure to the financial statements or notes thereto.[964] In addition to allowing for cross-referencing, Item 303(a)(4) of Regulation S–K requires that the substance of the cross-referenced information be integrated into the discussion to help inform readers of the significance of the information that is omitted from MD&A.[965]

1. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. Many commenters provided recommendations supporting the use of cross-referencing.[966] A few of these commenters recommended clear and precise cross-references to help investors locate important information in the current volume of disclosure.[967] Several supported greater use of cross-referencing to eliminate redundancies.[968] One of these commenters supported the use of cross-referencing where appropriate to eliminate duplicative information but suggested that any referenced document should be considered "filed with the SEC" for legal and liability purposes.[969] One of these commenters supported cross-referencing so long as the level of auditor assurance was not diminished.[970] This same commenter noted that many sections within Commission filings are meant to touch on the same topic but from a different perspective and encouraged the Commission to consider not whether those sections should be eliminated, but whether they should be tailored to meet the original disclosure objective.

Some commenters suggested that the Commission require or encourage the use of cross-references within filings.[971] One of these commenters recommended a new Commission policy on the avoidance of duplication and the use of cross-references.[972] This commenter recommended adding instructions to specific Regulation S–K items to encourage the use of cross-references to avoid duplicative disclosure.[973] This commenter also recommended that the inclusion of responsive disclosure anywhere in a document should be sufficient to satisfy the disclosure requirement without the need to include a cross-reference in each item calling for the information.[974]

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[960] *See* Selective Disclosure and Insider Trading, Release No. 33–7881 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)] ("Regulation FD Release").

[961] *See* S–K Study at 98–99.

[962] Public Law 114–94, Sec. 72001, 129 Stat. 1312 (2015).

[963] Some of the concepts raised in this section, such as incorporation by reference to Securities Act filings, may include filings outside of the scope of this release.

[964] *See, e.g.,* Items 101(b) and (d)(2), 202(a)(5), and Instruction 5 to Item 303(a)(4) of Regulation S–K [17 CFR 229.101(b) and (d)(2), 17 CFR 229.202(a)(5), and 17 CFR 229.303(a)(4)]. For a discussion of circumstances where cross-referencing would not be permissible or appropriate, *see* Section V.A.2.c.

[965] Instruction 5 to Item 303(a)(4) of Regulation S–K [17 CFR229.303(a)(4)].

[966] *See, e.g.,* letter from Thomas Amy (June 5, 2014) ("T. Amy"); CCMC; SCSGP; CFA Institute; Shearman; ABA 2; letter from William J. Klein and Thomas J. Amy (Dec. 12, 2014) ("Klein and Amy 1"); letter from William J. Klein and Thomas J. Amy (Aug. 31, 2015) ("Klein and Amy 4"); AFL–CIO.

[967] *See, e.g.,* T. Amy; Klein and Amy 1; Klein and Amy 4.

[968] *See, e.g.,* ABA 2; CCMC; CFA Institute; Shearman.

[969] *See* AFL–CIO.

[970] *See* CFA Institute.

[971] *See, e.g.,* Klein and Amy 1 (recommending that the Commission consider requiring that filers: (1) Make specific cross-references between the line items on their financial statements and the related notes, including the page where the note may be found; and (2) include a detailed table of contents or index for the notes, which would increase the transparency of financial information and make it easier to read and understand); Klein and Amy 4 (reiterating their previous recommendations and recommending that the Commission consider requiring that filers provide specific cross-references between all discussions of Legal Proceedings that appear in different sections of the report and in the notes to the financial statements); ABA 2; Shearman.

[972] *See* ABA 2.

[973] *See id.* (recommending amendments to Items 101(c)(ix) and 303(a)(1), (4) and (5) to state that "cross-references should be used to avoid duplicative disclosure").

2. Discussion

We recognize that an investor may find it easier to access all relevant information in a single location, even if a portion of the information is repeated elsewhere in the document. However, repetitive disclosure may obscure relevant information or render it difficult to evaluate the importance of the information. Below, we consider ways in which cross-references could potentially be used to reduce redundant disclosure and improve the navigability of lengthy documents.

a. Cross-References to Reduce Repetitive Disclosure

Where different disclosure requirements call for the same information in separate parts of the same document, as discussed above, our rules generally allow the registrant to cross-reference to the applicable discussion in another part of the document rather than duplicating the disclosure.[975] In some instances, Regulation S–K and U.S. GAAP requirements call for similar but not identical disclosures.[976] A registrant, subject to certain conditions, may present all the information required by both requirements in one location, with the second location simply containing a cross-reference back to the first location.[977] In this way, the related disclosures may be logically presented together and both requirements met in their separate locations within the filing while avoiding duplicative or partially duplicative disclosure.

In seeking input on how registrants can most effectively present and deliver important information, we recognize that information may be relevant to more than one filing or more than one section of a given filing. Registrants often repeat information in response to different item requirements in Form 10–K. For example, disclosure about the registrant's business appears in the Business section, and parts of that disclosure may be repeated in MD&A, risk factors, and the footnotes to the financial statements. Repetition of this information may be beneficial in certain contexts, such as a registrant with a complex organizational structure or business model. Repetition also may provide users of disclosure with direct access to the information they need in a consistent location, particularly to the extent that different audiences for disclosure focus on different filings or sections of filings. In other instances, such repetition can be distracting.

i. Request for Comment

286. Do investors find that cross-referencing within a filing in lieu of repeating the disclosure helps them locate important information? Why or why not?

287. Are there specific items in Regulation S–K that would benefit from greater use of cross-referencing to reduce duplicative disclosure? If so, which items? For these specific items, should we amend the item to specifically encourage use of cross-references? Alternatively, and as suggested by a commenter,[978] should we amend these items to meet the original disclosure objective more effectively?

288. Does cross-referencing negatively affect investors' ability to use disclosure by creating inconsistency in the location of information across different registrants and different filings? To what extent does cross-referencing introduce challenges with respect to comparative analyses or large-scale automated processing of disclosure?

289. Should we require registrants to provide certain disclosures in the same location (*e.g.,* under a specific item of the form) in every filing, rather than permitting cross-referencing? If so, which information should be located consistently and where should that information be located?

290. To what extent does the flexibility to use cross-references reduce compliance and administrative costs to registrants of preparing and disseminating disclosures? Please provide quantifications if possible.

b. Cross-References To Navigate Disclosure

Cross-references can also assist readers in navigating disclosure where disclosures are not necessarily duplicative but relate to the same topic and may be required in multiple locations throughout a filing.[979] For example, a discussion in the business section about how a registrant generates revenue may benefit from a cross-reference to the registrant's revenue recognition policy. Similarly, a risk factor that the registrant may not be able to meet payments on its outstanding debt may benefit from a reference to the debt footnote in the financial statements. Including these cross-references may help readers obtain a more complete picture by directing them to other similar information that the reader may not have otherwise reviewed. In addition, where registrants include a summary or overview of their filing or part of their filing, as contemplated by the FAST Act,[980] cross-references can assist the reader in locating the more detailed disclosure included elsewhere in the filing.[981]

i. Request for Comment

291. Are there certain items or topics that would benefit from a cross-reference to related or more comprehensive disclosure in different parts of the filing? If so, what are those items or topics?

292. Do cross-references that identify related information make the disclosure more or less readable?

c. Limitations on Cross-Referencing

Registrants' ability to use cross-references is not unlimited, as the

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[974] *See id.* The one exception recommended was for the financial statements and notes to the financial statements, where cross-references should not be used to satisfy U.S. GAAP requirements. However, where the financial statements and notes to the financial statements include disclosure that is responsive to Regulation S–K items, the commenter recommended that the rules allow an appropriate cross-reference to the relevant financial statement disclosure to satisfy the requirement.

[975] *See* Section V.A.

In the Securities Act context, Commission staff has discouraged registrants from repeating disclosure in multiple places in a prospectus, instead encouraging the inclusion of a brief overview to provide context in one section along with a cross-reference to more detailed discussion elsewhere. *See also* Updated Staff Legal Bulletin No. 7. In addition, Securities Act Rule 421(b), amended at the same time as our Plain English Rules, discourages repeating disclosure in more than one location that lengthens the filing without enhancing the quality of the information. *See* Note 4 to Rule 421(b) [17 CFR 230.421(b)]; Plain English Disclosure Adopting Release.

[976] *See, e.g.,* Item 103 of Regulation S–K (Legal proceedings) [17 CFR 229.103] and ASC Topic 450 (Contingencies); Item 404 of Regulation S–K (Transactions with related persons, promoters and certain control persons) [17 CFR 229.404] and ASC Topic 850 (Related Party Disclosures). The staff is separately considering Item 103 in developing recommendations for potential changes to update or simplify the requirements. For a description of these recommendations, *see* Section I.

[977] In some instances, a cross-reference is effectively prohibited because it would be inconsistent with the disclosure requirement. For example, the table of contractual obligations calls for aggregated information in a single location. A registrant could not satisfy the requirement to provide the data required in the table of contractual obligations with a cross-reference in MD&A to multiple financial statement footnotes. *See* Item 303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)]; and Off-Balance Sheet and Contractual Obligations Adopting Release.

[978] *See* CFA Institute.

[979] For a discussion of hyperlinks, *see* Section V.C.

[980] Public Law 114–94, Sec. 72001, 129 Stat. 1312 (2015).

[981] *See, e.g.,* H.R. Rep. 114–279, 114th Cong., 1st Sess. 4 (2015) (stating "[b]ecause the typical 10–K . . . is hundreds of pages long, investors find it difficult to locate important information" and that "a summary page would enable companies to concisely disclose pertinent information . . . [and] would also enable investors to more easily access the most relevant information about a company"). For a discussion of layered disclosure, *see* Section V.F.

Commission has discouraged cross-references that render disclosure unclear or incomplete. It also has acknowledged that vague or excessive cross-references can hinder the reader's ability to locate and understand information.[982] Moreover, even specific cross-references may draw the reader away from key information.[983]

While none of our rules prohibit the use of cross-references, there may be instances where cross-references would not satisfy the requirements or would detract from the readability or completeness of the disclosure. For example, the Commission has stated that its MD&A rules are intended to provide, in one section of a filing, a discussion of all the material impacts on the registrant's financial condition or results of operations, including those arising from circumstances discussed elsewhere in the filing.[984]

Cross-referencing is contemplated under auditing standards.[985] However, some auditors have expressed concern that cross-referencing from the financial statements to MD&A may confuse users on the auditor's responsibilities and what information the auditor's report covers.[986] Others have stated that the financial statements and the related notes should stand on their own so they can be audited or reviewed, as applicable.[987]

In addition, the financial statements are not covered by the PSLRA safe harbor from liability for forward-looking statements. The PSLRA does, however, cover MD&A disclosures.[988] While nothing prohibits cross-referencing between the financial statements and, for example, MD&A, forward-looking statements pulled from MD&A into the financial statements could "lose" their PSLRA safe harbor. Accordingly, preparers concerned about forward-looking information may have a disincentive to include a cross-reference in the financial statements to forward-looking information elsewhere in the document out of concern that doing so would effectively pull the statements into the financial statements and expose the registrant to liability without the protection of the PSLRA for such statements.[989]

i. Request for Comment

293. Are there items or topics where cross-references detract from the readability of a filing? Are there items or topics where we should prohibit cross-references and require all related information be presented in a single location? What are these items or topics?

294. Some of the Commission's guidance limiting the use of cross-referencing pre-date the expanded use of technology that allows registrants to hyperlink to referenced disclosure.[990] In light of technological changes that allow hyperlinks, which we discuss below, should we reconsider those rules that seek to provide investors with information in a single location?

295. Should we introduce requirements or guidance for the use of cross-references in order to increase the consistency in location of information across periods and registrants? If so, what requirements or guidance should we consider?

B. Incorporation by Reference

Rule 12b–23 of the Exchange Act generally allows a registrant to incorporate by reference information in any part of a registration statement or report in answer, or partial answer, to any other item of a registration statement or report.[991] In Form 10–K, registrants may incorporate by reference the information called for by Parts I and II [992] of Form 10–K from the company's annual report to security holders. Registrants also may incorporate by reference the information required by Part III of Form 10–K from the registrant's definitive proxy statement or information statement, as applicable.[993] The staff has provided interpretive guidance on Rule 12b–23, stating that within the guidelines specified by the rule, a registrant may incorporate by reference into its own Exchange Act documents any information contained in the filed documents of another issuer.[994]

Rule 12b–23 provides that where material is incorporated by reference:

- The material must be clearly identified by page, paragraph, and caption or otherwise;
- the filing must state that the specified matter is incorporated by

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[982] *See* Plain English Disclosure, Release No. 33–7380 (Jan. 14, 1997) [62 FR 3152 (Jan. 21, 1997)].

[983] *See* U.S. Securities and Exchange Commission, Office of Investor Education and Assistance. *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* (1998), *available at https://www.sec.gov/pdf/handbook.pdf.*

[984] *See* 1989 MD&A Interpretive Release. This guidance predated the use of hyperlinking technology. For a discussion of the limitations on hyperlinks to related materials, *see* Section V.C.

[985] AU 508, Paragraph 41 provides: Inadequate disclosure. Information essential for a fair presentation in conformity with generally accepted accounting principles should be set forth in the financial statements (which include the related notes). *When such information is set forth elsewhere in a report to shareholders, or in a prospectus, proxy statement, or other similar report, it should be referred to in the financial statements.* [Emphasis added]

[986] *See, e.g.*, letter from PricewaterhouseCoopers LLP to FASB, Nov. 29, 2012, *available at http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175825243422&blobheader=application%2Fpdf&blobheadername2=Content-Length&blobheadername1=Content-Disposition&blobheadervalue2=621509&blobheadervalue1=filename%3DDISFR.DP.0029.PRICEWATERHOUSECOOPERS_LLP.pdf&blobcol=urldata&blobtable=MungoBlobs* (recommending that notes not cross-reference to MD&A as it will not be clear what the audit report covers).

[987] *See, e.g.*, Financial Accounting Standards Board and Center for Audit Quality, *Financial Statement Disclosure Effectiveness: Forum Observations Summary*, Oct. 2012, *available at http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176160567809* ("FASB/CAQ Forum") (noting that some participants opposed cross-referencing as a tool to address disclosure overlap between MD&A and notes to financial statements due to concerns related to audit responsibility or because they felt that MD&A and the notes should each stand on their own); letter from PricewaterhouseCoopers LLP to FASB, July 10, 2014, *available at http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=2014-200* (expressing concern that disclosures presented outside the audited financial statements prepared in accordance with U.S. GAAP may not be subject to the same degree of scrutiny and assurance). *See also* ABA 2 (recommending a policy encouraging cross-referencing, except in the financial statements and notes to the financial statements, which should be considered a standalone section).

[988] 15 U.S.C. 78u–5. *See also* Off-Balance Sheet and Contractual Obligations Adopting Release.

[989] *See e.g.*, FASB/CAQ Forum.

[990] *See supra* note 984.

[991] Exchange Act Rule 12b–23 [17 CFR 240.12b–23]. In addition, Item 10(d) of Regulation S–K provides that where rules, regulations, or instructions to forms permit incorporation by reference, information may be incorporated by reference to the specific document and to the prior filing or submission containing the information. 17 CFR 229.10(d).

[992] Subject to some scaled disclosure requirements discussed in Section IV.H above, Parts I and II of Form 10–K generally require the following information:

Part I: Business, Risk Factors, Unresolved Staff Comments, Properties, Legal Proceedings, and Mine Safety Disclosures.

Part II: Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities, Selected Financial Data, MD&A, Quantitative and Qualitative Disclosures about Market Risk, Financial Statements and Supplementary Data, Changes in and Disagreements with Accountants on Accounting and Financial Disclosure, Controls and Procedures, and Other Information.

[993] Subject to some scaled disclosure requirements discussed in Section IV.H, Part III of Form 10–K generally requires the following information: Directors, Executive Officers and Corporate Governance; Executive Compensation; Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters; Certain Relationships and Related Transactions and Director Independence; and Principal Accounting Fees and Services.

To incorporate Part III information into the Form 10–K, the proxy statement or information statement must be filed not later than 120 days after the end of the fiscal year covered by the Form 10–K *See* General Instruction G(3) to Form 10–K.

[994] *See* Exchange Act Rules Compliance and Disclosure Interpretations Question 134.01, *available at http://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm.*

reference at the particular place in the report where the information is required; and

- except in certain circumstances, a copy of any information incorporated by reference or the pertinent pages of the document containing such information must be filed as an exhibit to the report where it is incorporated by reference.[995]

For exhibits, Rule 12b–32 allows any document or part thereof filed with the Commission to be incorporated by reference as an exhibit to any report filed with the Commission by the registrant or any other person.[996] Registrants regularly satisfy exhibit filing requirements by relying on Rule 12b–32 to incorporate exhibits by reference to previously filed reports or registration statements.[997] Rule 12b–32 also allows a registrant to meet the exhibit filing requirement of Rule 12b–23(a)(3) by incorporating by reference as an exhibit the document or portion of the document containing the information incorporated by reference under that rule.[998]

1. Comments Received

S–K Study. None.

Disclosure Effectiveness. One commenter suggested that the Commission encourage the use of incorporation by reference by revising Rule 12b–23(a)(3) to eliminate the requirement that copies of the pertinent pages containing incorporated disclosure be filed as an exhibit and ease the navigability of filings by requiring incorporated disclosure to be made accessible via hyperlink in the filed document.[999] Another commenter stated that many registrants fail to provide the page, paragraph, citation or other information required by Rule 12b–23(b), rendering the references less helpful.[1000]

2. Discussion

The Commission has a long history of permitting incorporation by reference.[1001] Incorporation by reference was a key component of Form S–3, introduced as part of the integrated disclosure system, based on the efficient market theory.[1002] The Commission envisioned that its integrated disclosure system would eliminate duplicative disclosure by allowing registrants to incorporate by reference information filed in Exchange Act reports into Securities Act registration statements.[1003] The Commission also acknowledged that incorporation by reference has limitations, as there is no assurance that the mere reference to incorporated information will be meaningful to an investor or potential investor.[1004]

The Commission initially limited eligibility to incorporate by reference in registration statements to seasoned, exchange-traded companies based on the likelihood that the information in the incorporated filings has been thoroughly analyzed and reflected in the price or rating of the securities offered. For these types of registrants, the Commission concluded that the cost savings to registrants of not having to repeat or refile information disclosed elsewhere outweighed the risk to investors that the stock price does not reflect the omitted information.[1005]

The integrated disclosure system also gave rise to the current structure of Form 10–K that allows registrants to incorporate Parts I and II from the annual report to shareholders and Part III from the definitive proxy statement.[1006] For periodic reports, registrants regularly incorporate by reference the information required by Part III of Form 10–K from their definitive proxy statements. Fewer registrants incorporate Parts I and II of Form 10–K from their annual reports to shareholders.[1007] This likely is because many companies have eliminated their separate annual report to shareholders and instead use Form 10–K to satisfy their Rule 14a–3 requirements.[1008] For exhibits, registrants often incorporate by reference exhibits from prior filings into their periodic reports.

Advancements in technology support greater use of incorporation by reference. In Securities Offering Reform, the Commission expanded the use of incorporation by reference conditioned on the registrant making its incorporated Exchange Act reports and other materials readily accessible on a Web site maintained by or for the registrant.[1009] By conditioning the ability to incorporate by reference on the ready availability of a registrant's incorporated Exchange Act reports and other materials on its Web site, the Commission sought to provide investors with the ability to obtain the information from those reports and materials at the same time that they would have been able to obtain the information if it were set forth directly in the registration statement.[1010]

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[995] Exchange Act Rule 12b–23 [17 CFR 240.12b–23]. Rule 12b–23(a)(3) provides that the following need not be filed as an exhibit: A proxy or information statement incorporated by reference in response to Part III of Form 10–K; a form of prospectus filed pursuant to 17 CFR 230.424(b) incorporated by reference in response to Item 1 of Form 8–A; and information filed on Form 8–K.

[996] Rule 12b–32 [17 CFR 240.12b–32].

[997] Item 601(a) of Regulation S–K [17 CFR 229.601(a)].

[998] Rule 12b–23 [17 CFR 240.12b–23(a)(3)].

[999] *See* ABA 2.

[1000] *See* Klein and Amy 1; Klein and Amy 4.

[1001] *See* Release No. 34–51 (Nov. 27, 1934) [*not published in the* **Federal Register**] (adopting the first Exchange Act rule, JB4, allowing registrants to incorporate by reference as an exhibit any document previously or concurrently filed with the Commission under the Exchange Act); *see also* Registration and Reporting Rules and Rules of General Application [13 FR 9321 (Dec. 31, 1948)] and 1948 Adoption of Amendments to General Rules and Regulations Release (adopting early versions of Rules 12b–23 and 12b–32).

[1002] *See* 1982 Integrated Disclosure Adopting Release at 11382 (stating that "Form S–3, in reliance on the efficient market theory, allows maximum use of incorporation by reference of Exchange Act reports and requires the least disclosure to be presented in the prospectus and delivered to investors" and that "[g]enerally, the Form S–3 prospectus will present the same transaction-specific information as will be presented in a Form S–1 . . . The prospectus will not be required to present any information concerning the registrant unless there has been a material change . . . which has not been reported in an Exchange Act filing or the Exchange Act reports incorporated by reference do not reflect certain restated financial statements or other financial information."). For a description of the efficient market theory, *see supra* note 163.

[1003] *See* 1980 Form 10–K Proposing Release.

Certain Commission forms allow historical incorporation by reference, meaning a registrant or issuer may incorporate information by reference to previous filings. Examples include Exchange Act Form 8–A, which allows for incorporation by reference of the description of a registrant's securities if a comparable description is contained in a prior filing. *See* Instruction to Item 1 of Form 8–A [17 CFR 249.208a]. Certain Securities Act registration statements also permit historical incorporation by reference, such as Form S–3, Form S–4, and Form S–11, which allow incorporation by reference of previous Exchange Act filings into the prospectus. *See* Item 12(a) of Form S–3 [17 CFR 239.13]; Item 11(a) of Form S–4 [17 CFR 239.25]; Item 29(a) of Form S–11 [17 CFR 239.18].

Certain Securities Act forms allow for forward incorporation by reference by certain issuers, where an issuer is permitted to forward incorporate by reference to Exchange Act reports filed in the future. Examples include Form S–3 and Form S–4. *See* Item 12(b) of Form S–3 [17 CFR 239.13]; Item 11(b) of Form S–4 [17 CFR 239.25]. In addition, the FAST Act recently directed the Commission to revise Form S–1 to permit SRCs to incorporate by reference to future filings. Public Law 114–94, Sec. 84001, 129 Stat. 1312 (2015); *See also* FAST Act Interim Rules Release.

Given the scope of this release and its focus on Exchange Act periodic reports, the discussion here generally is limited to historical incorporation by reference.

[1004] *See* 1980 Form 10–K Proposing Release.

[1005] *See id.*

[1006] *See* 1980 Form 10–K Adopting Release. Although Form 10–K was amended in 1980 to reflect the current structure, the Commission has allowed some form of incorporation by reference from the annual report to shareholders to satisfy requirements of Form 10–K since 1942. *See* Amendment to Forms for Registration and Filing Annual Reports [7 FR 10653 (Dec. 22, 1942)] and Release No. 34–3347 [*not published in the* **Federal Register**] (Dec. 18, 1942).

[1007] Based on data compiled by DERA, in calendar year 2014 approximately two percent of registrants incorporated some portion of the information required in either Part I or Part II of their Form 10–K from their annual report to shareholders, with more registrants incorporating Part II information than Part I information.

[1008] Exchange Act Rule 14a-3 [17 CFR 240.14a-3]; *see* Randi Morrison and Broc Romanek, *Annual Report & 10–K Wrap Handbook: Practice Guide & Toolkit*, Jul. 2014 (noting that more than fifty percent of companies use a "10–K wrap"); Neil Stewart, *Designers discuss trends in the latest crop of annual reports*, IR Magazine, Jun. 14, 2011, *available at http://www.irmagazine.com/articles/earnings-calls-financial-reporting/18271/directions-annual-reports/* (noting that investors are "far more likely to [receive] a plain 10K filing or perhaps a 10K-wrap" and that "[t]he traditional annual report may have been all but killed off by the austere 10K-wrap").

3. Request for Comment

296. To what extent does including previously disclosed information along with recent developments in a single self-contained filing facilitate an investor's understanding of a registrant's disclosure? Does repeating information that previously has been disclosed hinder an investor's ability to identify information that has changed since the registrant's last report? Does providing previously disclosed information along with information that is new or has changed better enable investors to consider the changes in context? If so, should we structure our requirements to elicit disclosure that highlights changes from a registrant's last report and provides a comprehensive discussion in a single location?

297. Should we expand or limit registrants' ability to incorporate by reference? Why or why not? Does incorporation by reference make the disclosure more or less readable?

298. Are there particular filings or sections of filings that should remain direct sources of disclosure information, rather than permitting incorporation by reference? If so, what information should be located consistently and in which filings? Which sections of those filings should contain the information? For example, is it more important for an investor to have information included directly and in full in a Securities Act registration statement than it is in an Exchange Act filing?

299. Should our requirements to provide historical and recent information within a single self-contained filing differ for registrants of different sizes, development stages, reporting histories or other factors?

300. Should registrants be permitted to incorporate by reference historical information from prior filings in lieu of presenting prior years' information in the Form 10–K? If so, when or how frequently should we require registrants to present or refresh their complete core disclosure? Should we limit this approach to certain categories of registrants and, if so, how should we determine which categories would be eligible?

301. Should we expand or limit registrants' ability to incorporate by reference to exhibits? Why or why not? Does incorporation by reference make it more difficult to locate exhibits?

302. To what extent does the flexibility to use incorporation by reference reduce compliance and administrative costs to registrants of preparing and disseminating disclosures? Please provide quantifications if possible.

C. Hyperlinks

Under Rule 105 of Regulation S–T, a registrant may include hyperlinks within a filing, such as a table of contents that hyperlinks to specific sections in a filing or a cross-reference that hyperlinks to another part of a filing.[1011] Rule 105 also allows registrants to include hyperlinks to exhibits within the same filing or hyperlinks to other Commission filings.[1012] However, registrants may not include hyperlinks to information outside the EDGAR system, such as external Web sites.[1013]

Of the two formats that are generally accepted by the EDGAR system, the text-based American Standard Code for Information Interchange ("ASCII") and hypertext markup language ("HTML"),[1014] only the HTML format accommodates hyperlinks. Currently, the vast majority of registrants file in HTML format.[1015] Many of these registrants include hyperlinks within their filings.

If a registrant includes a hyperlink in its filing, whether or not the link is permitted by Commission rules, the information in the linked material is not considered part of the filing for determining compliance with disclosure obligations. However, inclusion of the link will cause the registrant to be subject to the civil liability and antifraud provisions of the federal securities laws for the information contained in the linked material.[1016] Similarly, if a registrant hyperlinks to another hyperlink, the registrant will be treated as making all the hyperlinked material its own for liability purposes.[1017]

1. Comments Received

S–K Study. None.

Disclosure Effectiveness. Two commenters recommended amending Regulation S–K to specifically encourage use of hyperlinks within a filing.[1018] One of these commenters recommended requiring registrants to include a hyperlink to any material that is cross-referenced or incorporated by reference.[1019] The other commenter suggested allowing a hyperlink to information posted on a registrant's Web site to satisfy disclosure requirements.[1020]

2. Discussion

In 2000, the Commission stated that it is appropriate for registrants to assume liability for hyperlinked material as if it were part of the filing, because the use of hyperlinks in filings is voluntary and filers need not hyperlink to material that they do not wish to be understood as having adopted as their own. The Commission cautioned registrants not to use hyperlinks if they are not prepared to accept responsibility for the hyperlinked material.[1021]

The EDGAR system initially permitted hyperlinks only to different sections within a single document. In 2000, when the Commission expanded the permissibility of hyperlinks to allow hyperlinks to other documents and exhibits filed on EDGAR, the Commission stated that hyperlinks alone should not satisfy the disclosure requirements.[1022] The Commission noted that it would not be appropriate for a registrant to use hyperlinks effectively to use incorporation by reference when it is not permitted.[1023] In addition, when the form or rule does permit incorporation by reference, the registrant must comply with all of the form or rule requirements for such incorporation by reference.[1024]

[1009] *See* General Instruction VII.F. to Form S–1; General Instruction VI.F to Form F–1.

[1010] *See* Securities Offering Reform Release. Issuers may satisfy this condition by including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party Web site where the reports or other materials are available and access to the reports or other materials is free of charge to the user. *See* General Instruction VII.F. to Form S–1; General Instruction VI.F to Form F–1. The Commission noted that this manner of access was similar to those for disclosure of Web site access to an accelerated filer's Exchange Act reports. *See* Securities Offering Reform Release. In adopting the requirements for accelerated filers, the Commission noted that, while these reports were already available through the Commission Web site, access through company Web sites was still desirable to encourage the availability of information in a variety of locations and to foster best practices for making that information broadly accessible. *See* Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web site Access to Reports, Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480 (Sept. 16, 2002)].

[1011] Rule 105(b) of Regulation S–T [17 CFR 232.105(b)].

[1012] *Id.*

[1013] Rule 105 of Regulation S–T [17 CFR 232.105].

[1014] The EDGAR system also accepts PDF documents, but will not accept PDF documents containing hyperlinks. *See, e.g.,* EDGAR Filer Manual, Vol. I, v. 24 (Dec. 2015) at 3–27. Most PDF documents are considered unofficial copies, and PDF documents are permitted as official filings only in limited circumstances. *See* Rules 101 and 104 of Regulation S–T [17 CFR 232.101 and 17 CFR 232.104].

[1015] Based on data compiled by DERA, during calendar year 2015, ASCII represented less than one percent of all Form 10–K filings.

[1016] Rule 105(c) of Regulation S–T [17 CFR 232.105(c)].

[1017] *See* Rulemaking for EDGAR System, Release No. 33–7855 (Apr. 24, 2000) [65 FR 24788 (Apr. 27, 2000)] ("2000 EDGAR Release").

[1018] *See* Shearman; ABA 2.

[1019] *See* ABA 2.

[1020] *See* Shearman.

[1021] *See* 2000 EDGAR Release.

The Commission's rationale for limiting the use of hyperlinks was that readers might be unable to understand the content of the filing without accessing numerous hyperlinks and that readers would be unable to print the filing as an integrated whole.[1025] In 2008, in its guidance on the use of company Web sites, the Commission stated that the inability to print disclosure designed for interactive viewing and not for reading outside the electronic context, is not inherently detrimental to its readability.[1026] However, it also noted that certain disclosure would continue to be required in a format convenient for both reading online and printing.[1027]

Since this 2008 guidance, there has been a significant increase in the use of the Internet as a tool for disseminating information. As of 2014, eighty-seven percent of the U.S. population uses the Internet, up from seventy-four percent in 2008.[1028] In addition, recent data shows that most investors, even those who rely on financial advisors, use the Internet to conduct transactions and gather financial information.[1029] There have also been advancements in the types of technologies that can be used to report and analyze information.[1030] In light of these developments, we are interested in learning whether the Commission's prior concerns about disaggregated disclosure remain relevant. We are seeking public input on whether and how to revise our rules to take advantage of the Internet as a source of information about registrants.

3. Request for Comment

303. Should we consider revising our rules to permit registrants to include external hyperlinks in their filings? Should we consider permitting registrants to include external hyperlinks in their filings to satisfy disclosure obligations? Why or why not? What would be the benefits and challenges of such a requirement? [1031]

304. Would increased use of hyperlinks and further disaggregation of company disclosure into multiple filings hinder the quality or readability of disclosure? If so, how? What information, if any, should we require in a single filing or location?

305. Should we require registrants to include hyperlinks with any cross-reference to specific information or a specific section within a filing? Why or why not? What would be the benefits and challenges of such a requirement? In particular, what would be the costs or savings in compliance and administrative costs to registrants of required hyperlinks?

306. As suggested by one commenter,[1032] should we eliminate the requirement under Rule 12b–23 to attach, as an exhibit, information incorporated by reference from another filing, so long as the registrant includes in the text a hyperlink to the other filing?

D. Company Web sites

In certain circumstances, our rules and forms either permit or require the use of company Web sites as a means to provide information to investors. Depending on the circumstances, company Web sites may serve as a supplement to material filed or furnished via EDGAR, as an alternative to such materials, or as a stand-alone method of providing information to investors independent of EDGAR.[1033] Our rules do not permit a registrant to satisfy disclosure requirements by incorporating by reference to information on registrant Web sites.[1034]

When a company Web site supplements Commission filings, company information is available both on EDGAR and on the company's Web site. We have encouraged or required supplemental use of Web sites to make information more broadly accessible. For example, registrants are required to:

- Disclose their Web site addresses, if available, in annual reports on Form 10–K and state whether their Exchange Act reports are available on their Web sites; [1035]
- make their Exchange Act reports and documents incorporated by reference available on their Web site as a condition to incorporation by reference of previously filed reports into prospectuses filed as part of registration statements on Form S–1 or Form S–11; [1036]

[1022] *See* id.

[1023] *See* id. (stating that a filer would be permitted to use hyperlinks to optional information for the convenience of the reader, but could not omit information required within the filing by providing it through a hyperlink).

[1024] For example, the filing must contain a statement that the document is incorporated by reference, whether or not there is a hyperlink. As another example, Form 10–K may incorporate information from a registrant's annual report to security holders, so long as the information is filed as an exhibit to the Form 10–K. This exhibit is needed even if the information also is provided by hyperlink. *See* Section V.B for a discussion of incorporation by reference.

[1025] *See id.*

[1026] *See* 2008 Web site Guidance.

[1027] *See id.* (stating that the Commission did not think it was necessary that information appearing on company Web sites satisfy a printer-friendly standard unless our rules specifically require it, such as the notice and access model, which requires electronically posted proxy materials to be presented in a format convenient for both reading online and printing on paper). For a discussion of disclosure on company Web sites, *see* Section V.D.

[1028] *See* United Nations, International Telecommunications Union, *Percentage of Individuals using the Internet* (2015), *available at http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2015/Individuals_Internet_2000-2014.xls.*

[1029] *See Most Investors Use the Internet for Financial Research, Tools and Transactions; However, Two-Thirds Prefer to Interact with Advisors in Person,* Dec. 17, 2014, *available at http://www.johnhancock.com/about/news_details.php?fn=dec1714-text&yr=2014* (citing John Hancock's Investor Sentiment Survey and stating that eighty percent of investors have conducted transactions online and fifty-nine percent of investors prefer to use the Internet to research financial products).

[1030] *See* 2015 Investment Company Release; World Economic Forum, *Global Agenda Outlook 2013, available at http://www3.weforum.org/docs/WEF_GAC_GlobalAgendaOutlook_2013.pdf* (noting that technologies have evolved and continue to do so, while vast amounts of data are sent and received by billions of interconnected devices).

[1031] For a discussion of the use of company Web sites and our requests for comment on permitting registrants to incorporate information from their Web sites by reference in their flings, *see* Section V.D.

[1032] *See* ABA 2.

[1033] *See* 2008 Web site Guidance. More recently, in April 2013, in connection with an investigation of the use of social media to announce operational metrics, the Commission provided guidance to issuers on how the 2008 Web site Guidance and Regulation FD apply to disclosure made through social media channels. *See* Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act: Netflix, Inc. and Reed Hastings, Release No. 34–69279 (Apr. 2, 2013), *available at https://www.sec.gov/litigation/investreport/34-69279.htm.*

[1034] *See* Item 10(d) of Regulation S–K [17 CFR 229.10(d)] (providing that where rules, regulations or instructions to forms permit, a document may be incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted).

[1035] Accelerated filers and large accelerated filers are required to disclose this information. Non-accelerated filers are encouraged to do so. *See* Item 101(e) of Regulation S–K [17 CFR 229.101(e)].

[1036] *See* Form S–1, General Instruction VII.F [17 CFR 239.11]; Form S–11, General Instruction H.6 [17 CFR 239.18]. In the adopting release for the Form S–11 amendments, the Commission noted that companies could satisfy the requirement to make filings available on their Web sites by "including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party Web site where the reports or other materials are made available in the appropriate timeframe and access to the reports or other materials is free of charge to the user." *See* Revisions to Form S–11 to Permit Historical Incorporation by Reference, Release No. 33–8909, (Apr. 10, 2008) [73 FR 20512 (Apr. 15, 2008)].

- make their Exchange Act reports and other materials incorporated by reference available on their Web site as a condition for SRCs to forward incorporate by reference into a Form S–1;[1037]
- provide their financial statements to the Commission and post them on their corporate Web site, if any, in interactive data format using XBRL;[1038]
- post on their Web sites, if they maintain one, notice of their intent to delist or deregister their securities as a condition to withdrawing from registration under Section 12(b) of the Exchange Act;[1039] and
- post on their Web sites, if they maintain one, beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Exchange Act.[1040]

In some situations, registrants may satisfy a disclosure requirement either by filing the disclosure on EDGAR or by making it available on the registrant's Web site, thereby using company Web sites as an alternative to EDGAR.[1041] For example, Regulation G requires a registrant that publicly discloses or releases a material non-GAAP financial measure to provide reconciliation to the most directly comparable U.S. GAAP measure. A registrant that releases non-GAAP financial measures orally, telephonically, by webcast, by broadcast, or by similar means may satisfy Regulation G by posting the required reconciliation on its Web site and disclosing the location and availability during the presentation.[1042]

In addition, Item 406(c) of Regulation S–K, which requires disclosure of a registrant's code of ethics, requires the registrant to: File a copy of its code of ethics as an exhibit to its annual report; post the text of its code of ethics on its Web site and disclose in its annual report its Web site address and the fact that it has posted its code of ethics on its Web site; or undertake in its annual report to provide any person a copy of its code of ethics upon request.[1043] The Commission originally proposed to require a registrant to file a copy of its code of ethics as an exhibit to its annual report.[1044] At adoption, the Commission opted for greater flexibility, citing commenters' concerns that some codes are extremely lengthy and therefore would be difficult to file electronically on EDGAR and noting that many registrants already post their codes on their Web sites. In addition, our rules require disclosure on either Form 8–K or the registrant's Web site of any change to or waiver of its code of ethics for its senior financial officers.[1045]

Only in very limited circumstances do our rules allow a company's Web site to serve as a standalone method of providing information to investors wholly independent of EDGAR. Rules 12h–6 and 12g3–2(b) permit certain formerly reporting foreign private issuers to use their Web sites to provide information about the company in lieu of Exchange Act registration and reporting requirements. Unlike the examples above, where registrants' alternative to posting the information on their Web sites is to include it in a Commission filing, these companies are required to include the relevant disclosure on their Web sites. Otherwise, these companies would lose their exemption from registration under Section 12(g) of the Exchange Act.

1. Comments Received

S–K Study. None.

Disclosure Effectiveness. One commenter recommended that particular focus should be given to adapting disclosure practices to a more technologically-driven marketplace.[1046] Two commenters suggested that registrants be permitted to use their Web sites to satisfy certain disclosure requirements such as those relating to their business, management team, and board.[1047] One of these commenters recommended that registrants use their Web site as a repository for basic corporate documents, such as a company's certificate of incorporation or bylaws.[1048] Another commenter opposed the delivery of information using a registrant's Web site because it would "raise issues, including liability matters, certifications, preservation of past disclosure, comparability and accessibility that would need to be addressed."[1049] Another commenter stated that "having some information on a company Web site and other information on EDGAR can cause confusion for investors because they are often unsure where, if anywhere, information will be, and information provided on company Web sites is often difficult to find."[1050]

Another commenter acknowledged the potential efficiency to be gained through use of the Internet and electronic delivery, but suggested that, to protect the interests of investors who rely on paper delivery, the Commission should take steps to protect the interests or access of investors who depend on non-electronic access to information.[1051]

2. Discussion

As noted by several commenters, today's technology provides virtually instant access to information through a variety of sources outside of EDGAR, including company Web sites.[1052] The Internet has become a primary source of information for investors. We are seeking public input on whether and the extent to which investors benefit from requiring disclosure in a filing when the information is readily available on the registrant's Web site. We are also interested in what additional investor protections we should consider in the event we allow registrants to exclude required information from filings when the information is otherwise provided on their Web sites, such as requirements for registrants to preserve disclosure provided on their Web site.

[1037] *See* FAST Act Interim Rules Release.

[1038] *See* Rule 405 of Regulation S–T [17 CFR 232.405] and Item 601(b)(101) of Regulation S–K [17 CFR 229.601(b)(101)]. In adopting the interactive data requirements, the Commission stated that requiring the submission and posting of interactive data has the potential to provide advantages for the investing public by making the data more accessible, timely, inexpensive and easier to analyze. *See* Interactive Data Release.

[1039] Exchange Act Rule 12d2–2(c)(2)(iii) [17 CFR 240.12d2–2(c)(2)(ii)].

[1040] *See* Exchange Act Section 16(a)(4)(C) [15 U.S.C. 78p] and Rule 16a–3(k) [17 CFR 240.16a–3(k)]. Section 403 of the Sarbanes-Oxley Act [Pub. L. 107–204, Sec. 403 116 Stat. 745 (2002)] amended Section 16(a) of the Exchange Act [15 U.S.C. 78p] to require issuers to file statements of beneficial ownership on Forms 3, 4 and 5 electronically with the Commission and issuers with company Web sites to post change in beneficial ownership reports on their Web sites. The Commission adopted Rule 16a–3(k) to require registrants that maintain a corporate Web site to post on its Web site all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing. The Commission noted that "One objective of the amendments is to encourage availability of this information in a variety of locations, so that it is broadly accessible." *See* Mandated Electronic Filing and Web site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25787 (May 13, 2003)].

[1041] *See* 2008 Web site Guidance.

[1042] *See* Non-GAAP Measures Release.

[1043] Item 406(c) of Regulation S–K [17 CFR 229.406(c)].

[1044] *See* Proposed Rule: Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)].

[1045] *See* Sarbanes-Oxley Act, Section 406(b) [Pub. L. 107–204, Sec. 406(b) 116 Stat. 745 (2002)]. *See also* Audit Committee Financial Expert and Code of Ethics Adopting Release. A registrant may only use its Web site to disseminate this disclosure if it previously has disclosed in its most recently filed annual report its intention to disclose these events via its Web site and the address of its Web site.

[1046] *See* Lin.

[1047] *See* CCMC (suggesting companies cross-reference their Web sites to satisfy certain disclosure obligations); Shearman (suggesting companies file certain core corporate information both on EDGAR and the company's Web site).

[1048] *See* Shearman.

[1049] *See* SCSGP.

[1050] *See* letter from the Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Feb. 15, 2016) ("ABA 3").

[1051] *See* AFL–CIO.

[1052] *See, e.g.,* CCMC; SCSGP; CFA Institute; Shearman; ABA 2.

Currently, investors typically can access registrants' public filings since 1996 through EDGAR.[1053] Investors may request other public filings or records from the Commission.[1054] However, information posted on company Web sites may change frequently and may not remain available to investors. Certain of our rules that allow registrants to disseminate information through their Web sites in lieu of including that information in a filing also require the registrant to maintain that information for a designated period of time. For example, registrants posting their code of ethics on their Web site under Item 406(c) are required to make the information accessible for as long as the registrant remains subject to Item 406.[1055] Similarly, registrants required to post Exchange Act Section 16(a) filings on their Web sites are required to keep those filings accessible on their Web sites for at least a 12-month period.[1056] As another example, while Regulation G does not specify how long a registrant must keep disclosure available on its Web site, the Commission encourages companies to provide ongoing Web site access to this information for at least a 12-month period.[1057]

For historical information available on company Web sites, the Commission has stated generally that "the fact that investors can access previously posted materials or statements on a company's Web site does not in itself mean that such previously posted materials or statements have been reissued or republished for purposes of the antifraud provisions of the federal securities laws, that the company has made a new statement, or that the company has created a duty to update the materials or statements."[1058] To help assure that investors understand that the posted materials or statements speak as of a date or period earlier than when the investor may be accessing the posted materials or statements, the Commission has stated that historical or previously posted materials or statements should be:

- Separately identified as historical or previously posted materials or statements, including, for example, by dating the posted materials or statements; and
- located in a separate section of the Web site containing previously posted materials or statements.[1059]

In other contexts, the Commission has expressed concerns about whether information disclosed on company Web sites would be adequately preserved for purposes of the reporting and liability provisions under the federal securities laws.[1060]

Information on company Web sites currently is subject to some but not all Exchange Act liability provisions. Anti-fraud provisions of the federal securities laws, including Exchange Act Section 10(b) and Rule 10b–5, apply to statements made on a company Web site. If a registrant were to make a false or misleading statement of a material fact on its Web site in connection with the purchase or sale of a security, the registrant could face liability under Section 10(b) and Rule 10b–5. These anti-fraud provisions also apply in certain circumstances to third-party information available via hyperlink on a company Web site that could be attributable to the company, in the same way they would apply to any other statement made by, or attributable to, a company.[1061]

The reporting provisions of Exchange Act Section 13(a) and Exchange Act Rules 13a–1 and 12b–20 generally do not apply to disclosures on company Web sites. However, if a company fails to satisfy a Web site disclosure option that relieves it of its obligation to file or furnish an Exchange Act report, an action could be brought under the Exchange Act reporting provisions based on the company's failure to file the report.[1062] For example, in the event a company fails to make public disclosure of information as required by Regulation FD,[1063] that issuer would violate Regulation FD as well as Section 13(a) or Section 15(d) of the Exchange Act.[1064]

Material incorporated by reference into a filed document is subject to liability under Section 18 of the Exchange Act, which provides a private cause of action for a false or misleading statement of material fact in a filed document.[1065] Material appearing solely outside Commission filings, such as on a registrant's Web site, cannot be incorporated by reference into a registrant's filings[1066] and would not be subject to Section 18 liability.

Liability under Sections 11 and 12(a)(2) of the Securities Act applies to information in Exchange Act filings when it is incorporated by reference in a registration statement or prospectus. Section 11 imposes liability on an issuer for any untrue statement or omission of a material fact in a registration statement. Section 12(a)(2) of the Securities Act imposes similar liability for material misstatements or omissions in a prospectus or oral communication that constitutes an offer. This liability also applies to information incorporated by reference, where permitted, from Exchange Act filings filed after the registration statement. Under our current rules, disclosure provided on a registrant's Web site rather than in an Exchange Act filing cannot be incorporated by reference into a registration statement or prospectus. Accordingly, it would not be subject to Section 11 liability and would only be subject to Section 12(a)(2) liability to the extent it constitutes an offer.

3. Request for Comment

307. Should we continue to limit the permitted sources of information incorporated by reference to Commission filings, or should we allow registrants to incorporate information from their Web sites?

[1053] Registrants were phased into EDGAR over a three-year period ending May 6, 1996. As of that date, all domestic registrants were required to make their filings on EDGAR, except for filings made in paper because of a hardship exemption. *See* Rulemaking for EDGAR System, Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752 (Dec. 30, 1994)]; U.S. Securities and Exchange Commission, Office of Information Technology, *Important Information About EDGAR, available at, https://www.sec.gov/edgar/aboutedgar.htm.*

[1054] *See* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, *Records and Information, available at, http://www.sec.gov/answers/publicdocs.htm.*

[1055] Instruction 2 to Item 406(c) of Regulation S–K [17 CFR 229.406(c)].

[1056] Exchange Act Rule 16a–3(k) [17 CFR 240.16a-3(k)]. In addition, the Commission has stated that the availability of historical issuer information provides investors with more readily accessible information about the issuer and that issuers should be able to maintain historical information on their Web site so that information will remain accessible to the public but will not be considered to be reissued or republished for purposes of the Securities Act. *See* Securities Offering Reform Release.

[1057] *See* Non-GAAP Measures Release.

[1058] *See* 2008 Web site Guidance.

[1059] *See id.* These requirements are consistent with Securities Act Rule 433(e)(2) [17 CFR 230.433(e)(2)] (setting forth conditions under which Web site disclosure will not constitute an offer or a free writing prospectus).

[1060] *See, e.g.,* 2014 NRSRO Amendments Release; 2015 Investment Company Release.

[1061] 15 U.S.C. 78j; 17 CFR 240.10b–5. *See* 2008 Web site Guidance (citing Use of Electronic Media for Delivery Purposes, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]); Use of Electronic Media, Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]).

[1062] *See* 2008 Web site Guidance (citing Exchange Act Section 13(a) [15 U.S.C. 78m] (requiring companies with a class of securities registered under the Exchange Act to file reports prescribed by the Commission) and Exchange Act Rule 13a–1 [17 CFR 240.13a–1] (requiring such companies to file an annual report with the Commission)).

[1063] 17 CFR 243.100 *et seq.*

[1064] *See* Regulation FD Release; Rule 101 of Regulation FD [17 CFR 243.101]; 15 U.S.C. 78m; 15 U.S.C. 78o(d).

[1065] 15 U.S.C. 78r.

[1066] Exchange Act Rule 12b–23 [17 CFR 240.12b–23].

308. Are there challenges investors may face in using sources outside registrant filings to obtain information about a registrant? If so, what are these challenges? Would investors seeking information on a registrant's Web site rather than in its filings require specialized equipment, knowledge or expertise that some investors may not have? What would be the impact on investors who want to receive materials in paper?[1067] What would be the impact on investors or third parties who engage in automated processing or large-scale analysis of disclosure on EDGAR?

309. Would investors seeking information from third-party sources require specialized equipment, knowledge or expertise that some investors may not have? What would be the impact on investors who want to receive materials in paper? What other challenges would this approach pose for investors or for registrants?

310. Do the benefits or challenges of incorporating information by reference differ based on whether the information is incorporated from a company's Web site or from its filings?

311. If we allow registrants to provide required disclosure by incorporating information by reference to their Web sites, how could registrants limit or delineate the information on their Web sites that is "filed" for liability purposes? What obligation should the registrants have to preserve the material as incorporated or to update the incorporated information? How should it be preserved in the event the registrant exits the reporting system or goes out of business? What would be the impact on the reporting and liability provisions of the federal securities laws if this information is not preserved as required?

312. Are there categories of business or financial information that we should permit registrants to disclose by posting on their Web sites in lieu of including in their periodic reports?

313. Should we permit registrants to meet the requirements of Item 601 of Regulation S–K by incorporating exhibits by reference to documents posted on their Web sites? What would be the benefits and challenges of such an approach?

314. As an alternative to incorporation by reference, should we allow registrants to omit required information from filings when the information is otherwise provided on a registrant's Web site? If so, what information would be appropriate and what additional investor protections should we consider?

315. To the extent that information about a registrant is readily available on its Web site, what are the benefits of continuing to require disclosure of the same information in the registrant's filings? What would be the impact on registrant liability, accuracy of reported information or investor protection generally if we eliminated disclosure requirements for information that investors routinely access from Web sites?

316. Should we consider permitting incorporation by reference from sources other than a registrant's filings or its Web site? If we allow registrants to provide required disclosure by incorporating information by reference to third-party sources, should we require them to include a hyperlink to that information? Would registrants use such an option?

317. What types of investors or third parties are most likely to value disclosure made available on registrant Web sites?

318. To what extent would permitting registrants to incorporate information from their Web sites enable them to realize cost savings, including savings in the administrative and compliance costs of preparing and disseminating disclosure? Please provide quantifications of expected changes in costs if possible.

E. Specific Formatting Requirements

The business and financial disclosure requirements in Regulation S–K generally do not specify the precise layout or format for disclosure.[1068] In adopting the earliest Exchange Act report forms, the Commission's emphasis was "on substance rather than on form," giving companies "wide latitude in the manner of presenting the required data."[1069] Current Forms 10–K and 10–Q specify that they are not a blank form to be filled in but a guide to be used in preparing the report.[1070]

While our general approach allows registrants to use discretion in the overall layout of their disclosure, a few items prescribe the format for disclosure. In some cases, basic formatting requirements may be standardized, such as the prescribed location, order or title of required disclosure. For example, the structure of our periodic reports and related rules require registrants to include the numbers and captions of all items in the relevant form.[1071] Some of our more specific requirements seek to elicit standardized information, such as prescribed tables with standardized rows and columns, such as the tabular disclosure of contractual obligations in Item 303(a)(5).[1072]

1. Comments Received

S–K Study. None.

Disclosure Effectiveness Initiative. Many commenters provided recommendations on the placement or presentation of registrant disclosure to facilitate identification of current, material information.[1073] Two commenters suggested that prior to creating and implementing any new system, the Commission should encourage registrants to experiment with different formats in periodic reports, rather than strictly following the prescribed format of disclosure items in the applicable form.[1074] One of these commenters stated that this would support reaching (and effectively communicating with) the broadest possible set of investors.[1075] This commenter also suggested that our rules should incorporate the "growing body of scholarship around user experience" to improve the utility of corporate reporting. This commenter specified that some information lends itself well to graphic presentation and that, where possible, reporting companies should use graphics to communicate key trends and practices to investors quickly and clearly. Another commenter suggested that we encourage registrants to base the order, prominence and extent of disclosures presented on the materiality of the matter covered by such disclosures.[1076] One commenter recommended a more complete and descriptive table of contents to help investors navigate the current volume of disclosure.[1077] One commenter stated that disclosure in "[p]lain language, clear formatting, no footnotes, no jargon, complete information without having to jump to another site are critical and doable." [1078] Some commenters supported the concept of a "company profile" or "company tab" discussed in the S–K Study.[1079]

[1067] *See, e.g.,* Part I, Item 12(c) of Form S–3 (requiring issuers to state that it will provide a copy of any or all of the information, including Exchange Act reports, that has been incorporated by reference in the prospectus upon request at no cost to the requester).

[1068] This section discusses formatting requirements that call for a standardized visual presentation or layout of disclosure within a registrant's ASCII or HTML filing. For a discussion of structured disclosures and our requirements for specific data formats to facilitate the extraction of information into standardized formats, *see* Section V.G.

[1069] Release No. 34–66 (Dec. 21, 1934) [*not published in the* ***Federal Register***].

[1070] *See* General Instruction C.1 to Form 10–K [17 CFR 249.310]; General Instruction C.1 to Form 10–Q [17 CFR 249.308a]. In addition, Form 10–K cites Exchange Act Rule 12b–20, which requires a company to include, in addition to any information specifically required to be included in a statement or report, any further material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. *See* General Instruction C.3 to Form 10–K [17 CFR 249.310]; Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[1071] *See, e.g.,* Form 10–K [17 CFR 249.310]; Exchange Act Rule 12b–13 [17 CFR 240.12b–13].

[1072] Item 303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)]. While outside the scope of this release, Item 402 of Regulation S–K provides another example of prescribed format requirement calling for standardized tables with specified titles, rows, and columns for the disclosure of certain executive compensation information. [17 CFR 229.402].

[1073] *See, e.g.,* AFL–CIO; T. Amy; letter from Robert H. Chambers (June 13, 2014) ("R. Chambers"); CCMC; SCSGP; SIFMA; CFA Institute; Shearman.; ABA 2; UK Financial Reporting Council; Business Roundtable; Ernst & Young 2; Klein and Amy 3. Several of these commenters proposed various changes to EDGAR technology and related functionality to improve the readability, navigability, and usability of information.

[1074] *See* AFL–CIO; SCSGP.

[1075] *See* AFL–CIO.

One commenter recommended disclosure in Q&A form for certain common risk factors, with standardized questions for all registrants allowing only for potential responses of "yes," "no," or "NA." [1080] Another commenter provided results of a survey that it conducted showing that a "substantial majority of respondents (65 percent) indicated that the increased use of tables and charts would be very important to improving financial reporting." [1081] This commenter stated that investors want quantitative tables with entity-specific information appropriately disaggregated and suggested that this information should be supported by "qualitative explanations that are not littered with boilerplate or generic language." [1082] This commenter further stated that standardization of quantitative disclosures would enhance comparability over time and among firms.[1083] Similarly, another commenter recommended that companies consider the use of "pie charts" and "bar charts" to enhance certain disclosure.[1084]

2. Discussion

A standard layout, format, or style requirement may enhance the comparability of disclosures across periods and across issuers and registrants. Such comparability and consistency may reduce the costs of acquiring information, increase valuation accuracy, and enhance investment efficiency.[1085] A standardized presentation may also reduce the ability of registrants to choose presentation formats that could highlight more favorable disclosures and obscure less favorable ones.

However, flexibility in the presentation of disclosure may enhance the ability of registrants to tailor disclosure to their individual circumstances and investor bases. Flexibility in presenting disclosure could allow registrants to more effectively communicate the information most critical to understanding their particular company as prescriptive presentation requirements may increase the risk of important information being obscured by less important information. In addition, repetitive disclosure may be due in part to the structure of our Exchange Act forms and related rules, which require registrants to include in their periodic reports the numbers and captions of all items in the relevant form.[1086]

3. Request for Comment

319. Do current disclosure requirements appropriately consider the need for both standardization and flexibility in presentation? If not, how could we change our requirements?

320. How could we facilitate or encourage better presentation of disclosure by registrants?

321. Would further prescribing the order and format for presenting information in annual or quarterly reports improve readability or increase comparability across registrants? Would such standardized requirements enhance the ability of investors and third parties to use disclosures, including for large-scale processing and analyses, in a more timely and efficient way?

322. Is there particular information that investors would prefer we require registrants to present in a specific order or in a particular section of the document? If so, which information should be so presented? What would be the advantages or disadvantages of such an approach?

323. Do item numbers and captions improve the clarity, navigability or overall effectiveness of disclosure? Should we revise our rules to reduce or eliminate the requirement to include the item numbers and captions from any of our forms? Why or why not?

324. Should we revise any of our current disclosure rules to require a standardized tabular or graphic presentation rather than, or in addition to, the narrative disclosure we currently require? Which disclosures could be improved by a requirement for tabular or graphic presentation? Would such a presentation improve comparability of disclosure across registrants? Does increased comparability improve transparency or is it otherwise beneficial to investors? What would be the advantages or disadvantages of such an approach?

325. Should we require registrants to present certain disclosures in question-and-answer format? If so, what information would be appropriate for this format? Should we require or permit it for certain types of registrants?

326. Should we permit or require registrants to present certain disclosures in a "check-the-box" presentation, where registrants select the appropriate disclosure from a finite list of options? For example, should we require or permit registrants to indicate by checkbox rather than narrative disclosure portions of the information regarding changes in and disagreements with accountants under Item 304 or management's conclusions regarding the effectiveness of the registrant's disclosure controls and procedures under Item 307? What would be the advantages or disadvantages of such an approach?

327. What disclosure requirements, if any, would generate more meaningful disclosure if we modified or eliminated the specific formatting or presentation requirements and permitted greater flexibility in the manner of presentation?

328. How would disclosure costs or other challenges to registrants be affected by any increase in the use of specific formatting or presentation requirements?

F. Layered Disclosure

In first implementing our integrated disclosure system, the Commission considered various approaches that might differentiate between institutional investors, professional security analysts and sophisticated individual investors.[1087] These approaches included providing investors the option of receiving a simplified annual report containing summary information in lieu of the full, or portions of the, traditional annual report.[1088] While the Commission did not adopt such an approach, it has encouraged layered disclosure in several instances.

[1076] *See* Ernst & Young 2.

[1077] *See* T. Amy.

[1078] *See* letter from Barbara Amsden (Oct. 25, 2015).

[1079] *See, e.g.,* CCMC; SCSGP; CFA Institute; Shearman. *See also* S–K Study at 98 (recommending consideration of a framework based on the nature and frequency of disclosure that would include "core" disclosure or a "company profile" for information that changes infrequently and would be supplemented by periodic filings for information that changes more frequently).

[1080] *See* R. Chambers.

[1081] *See* CFA Institute. *See also* CFA Report.

[1082] *Id.*

[1083] *See id.*

[1084] *See* Klein and Amy 3 (discussing disclosure of share buyback programs).

[1085] *See, e.g.,* G. DeFranco, S.P. Kothari, and R. Verdi, *The Benefits of Financial Statement Comparability,* 49 J. Acct. Res. 895, 895–931 (2011); S. Young and Y. Zeng, *Accounting Comparability and the Accuracy of Peer-Based Valuations Models,* 90 Acct. Rev. 2571, 2571–2602 (2015); C. Chen, D. Collins, T. Kravet, and R. Mergenthaler, *Financial Statement Comparability and the Efficiency of Acquisition Decisions* (working paper) (Dec. 15, 2015) *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2169082.*

[1086] *See, e.g.,* Form 10–K; Exchange Act Rule 12b–13 [17 CFR 240.12b–13].

The Wheat Report noted that special efforts should be made to call any unusually speculative elements or risk factors of an offering to the attention of the ordinary investor using an introductory statement.[1089] For MD&A, the Commission has suggested registrants use an overview, introduction or other statement of the principal factors, trends or other matters that are covered in more detail elsewhere in the section.[1090] The Commission cautioned that an introduction or overview should not be a duplicative layer of disclosure that repeats the more detailed discussion and analysis that follows. Instead, it should present information in a manner that emphasizes the information and analysis that is most important.

In offering prospectuses, our rules require summary presentations where the length or complexity of the prospectus makes a summary useful.[1091] Similarly, our rules require open-end management investment companies to include key information at the front of their statutory prospectuses in a standardized order to provide investors disclosure that is easier to use and more readily accessible, while retaining the comprehensive quality of the information available elsewhere.[1092]

1. Comments Received

S–K Study. One commenter suggested that the Commission analyze each required disclosure, segregating them by nature and frequency of change to determine the method of filing and delivery.[1093] This commenter proposed that basic information (such as the description of the business, risk factors, officers and directors, Web site address) that typically does not significantly change from quarter to quarter, absent a specific transaction or event, should only require updating when something changes. Additionally, the commenter recommended that the information presented in periodic reports be limited to new information specific to the most recent fiscal period (such as MD&A, selected quarterly financial data and executive compensation).

Disclosure Effectiveness Initiative. A few commenters addressed layering disclosure and the use of summaries to improve disclosure.[1094] One of these commenters stated that an integrated presentation of related information, such as layering information, with summary information presented first and details presented later or long-standing explanatory information that may still be relevant placed separately, perhaps as a schedule to the financial statements, enhances understanding of the relationship between items across financial statements.[1095] Another commenter proposed a rule requiring companies to provide an overview describing what happened at the company over the past year and the company's expectation and concerns about the year to come.[1096] This commenter noted that such a rule would not replace the more detailed financial and other business information that allows analysts to populate their models and otherwise scrutinize performance, but would permit management to identify up front what it determines to be the most important information in a way that is both understandable and provides context.

One commenter proposed the use of "tabs" to organize information topically (*e.g.*, business, officers and directors, material risks), with information under various tabs to be updated appropriately and supplemented with periodic MD&A disclosure.[1097] This commenter suggested that more effective, navigable documents should eliminate the need for summary disclosure for retail investors without eliminating material information. This commenter further noted that all investors, retail or institutional, should have access to full and fair disclosure.[1098]

2. Discussion

As discussed in Section III.B.2., the informational needs, financial resources, and capacity to analyze disclosure may vary significantly among investors. Highly sophisticated investors may seek a different level or presentation of information than those with fewer financial or analytical resources. For example, some investors may prefer a summary presentation while others may seek detailed data that they can analyze and compare across companies or industries.[1099] In addition, a "layered" approach to disclosure that highlights what management believes is the most important information, while still providing detailed data and analysis,[1100] may make filings more navigable for all investors. On the other hand, a "layered" approach could introduce challenges for investors or third parties seeking all available disclosure on a particular topic, as they many need to search summary disclosures as well as more detailed disclosures for all data and commentary relevant for their purposes. The FAST Act requires the Commission to issue regulations permitting registrants to submit a summary page in their Form 10–K.[1101] We do not address this aspect of layered disclosure here.

3. Request for Comment

329. Other than a summary page, are there other approaches to layering or layered disclosure that we should consider for business and financial information in periodic reports? If so, what are the benefits and challenges of these approaches?

G. Structured Disclosures

Investors, their financial advisors, and professional analysts use increasingly complex information and find that structured disclosures facilitate analysis of this information.[1102] Some investors seek structured data as it enhances their ability to use technology to process and synthesize information,[1103] allowing for more timely and granular analysis of financial information, including comparative[1104] and trend analysis.[1105]

[1087] *See* 1980 Form 10–K Adopting Release ("The Commission recognizes that the information content in Form 10–K not only was originally formulated for a specialized use, but that within those groups which have utilized the Form there are different constituencies. Those constituencies which have been the most frequent users of Form 10–K information are institutional investors, professional security analysts and sophisticated individual investors.").

[1088] *See id.* The release noted that the potential approach would be based on an "as yet unproven hypothesis that some users, particularly certain individual investors, either rely on financial advisers and therefore do not use detailed disclosure, or are overwhelmed by the technical nature or volume of presently required disclosure." However, the release also cited studies such as that conducted by Professors Lucia S. Chang and Kenneth S. Most at Florida International University indicating that the typical "unsophisticated small investor" often is quite sophisticated. *See* Lucia S. Chang and Kenneth S. Most, *Financial Statements and Investment Decisions* (1979).

[1089] *See* Wheat Report at 32.

[1090] *See* 2003 MD&A Interpretive Release. For a discussion of executive level overviews in MD&A, see Section IV.B.3.b.

[1091] *See, e.g.*, Item 503(a) of Regulation S–K [17 CFR 229.503(a)].

[1092] Form N–1A [17 CFR 239.15A].

[1093] *See* Ernst & Young 1.

[1094] *See, e.g.*, CFA Institute; NYC Bar; SGSCP.

[1095] *See* CFA Institute. *See also* CFA Report.

[1096] *See* NYC Bar.

[1097] *See* SCSGP.

[1098] *Id.*

[1099] *See, e.g.*, *Study Regarding Financial Literacy Among Investors*, (Aug. 2012) *available at http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf* (finding that investors favor "layered" disclosure and, wherever possible, the use of a summary document containing key information about an investment product or service).

[1100] *See, e.g.*, 2003 MD&A Interpretive Release.

[1101] Public Law 114–94, Sec. 72001, 129 Stat. 1312 (2015).

Structured disclosures include both numeric and narrative-based disclosures that are made machine-readable by having reported disclosure items labeled (tagged) using a markup language, such as eXtensible Markup Language (''XML'')[1106] or XBRL.[1107] Tagging disclosure enables information to be structured, stored, shared, and presented in different systems or platforms.[1108]

Standardized markup languages, such as XBRL, use standard sets of data element tags for each required reporting element, referred to as taxonomies. Taxonomies provide common definitions that represent agreed-upon information or reporting standards, such as U.S. GAAP for accounting-based disclosures.[1109] The resulting standardization of financial reporting allows for aggregation, comparison, and large-scale statistical analysis of reported financial and other material information through significantly more automated means than is possible with unstructured formats, such as unstructured HTML or ASCII.

Commission rules currently require several categories of registrants to provide certain information in XBRL, including, the following:

Category of registrant	Information required to be tagged	Language required	Method of submission
Reporting companies[1110]	Financial statements, including footnotes and schedules.	XBRL	Filed as exhibit.
Security-based swap data repositories[1111]	Financial statements, including footnotes and schedules.	XBRL	Filed as exhibit.
Open-end management investment companies, or mutual funds[1112].	Risk/return summaries	XBRL	Filed as exhibit.
Nationally recognized statistical rating organization (NRSRO)[1113].	Credit rating history	XBRL	Posted on its Web site, with a link to such location included in an exhibit to its annual Form NRSRO.

The Commission requires certain registrants and other filers to provide certain information in XML or other machine-readable format. Asset-backed issuers are required to provide asset-level disclosures in XML in their registration statements.[1114] Forms D, filings required under Regulation A and Regulation Crowdfunding, and Section 16 ownership reports also require all or a part of the information to be filed using XML technology.[1115] In addition, beginning in 2016, Regulation SBSR will require security-based swap data repositories to report and publicly disseminate in machine-readable electronic format certain security-based swap transaction information, although the regulation does not specify a required format.[1116] We are seeking public input on the use of structured data and other available standards and technologies that could enhance the quality of disclosure to investors while reducing burdens on registrants.

[1102] *See, e.g.,* CFA Report (stating that investors do not seek a reduction in data or volume of disclosures, as they can use technology to evaluate the data, but instead seek to identify more effective ways to capture, manage, analyze, present, and deliver financial data); Interactive Data Release (stating that many commenters generally supported the required submission of interactive data).

[1103] *See Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors* (July 25, 2013) (''IAC Data Tagging Recommendations''), *available at http://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf* (recommending that the Commission (i) promote the collection, standardization and retrieval of data filed with the Commission using machine-readable data tagging formats, (ii) take steps to reduce the costs of providing tagged data, especially for smaller issuers and investors and (iii) prioritize revising existing forms to provide for the tagging of data in order to increase transparency with respect to corporate governance).

[1104] *See* Hu 2014 at 620 (noting that greater standardization of information allows for cross-company comparisons of performance).

[1105] *See* Institute for Corporate Responsibility at George Washington University and the Center for Audit Quality, *Initiative on Rethinking Financial Disclosure,* Nov. 2014, *available at http://business.gwu.edu/about-us/research/institute-for-corporate-responsibility/research-projects/rethinking-financial-disclosure* (advocating a disclosure platform that allows comparison of information and analysis of a company's performance trends).

[1106] XML is an open source markup language to tag elements of a document. It does not have a defined set of tags, but instead provides a mechanism to define tags and structural relationships between tagged elements. *See* Norman Walsh, *A Technical Introduction to XML* (Oct. 1998), *available at http://www.xml.com/pub/a/98/10/guide0.html?page=2#AEN58.*

[1107] XBRL is an open source standardized language derived from XML for purposes of tagging business reporting information. Many commercial vendors and open source projects support the XBRL standards with tools and software. *See* Stephanie Farewell, *XBRL International, Inc., XBRL or Customized XML?* (Oct. 2010), *available at http://www.xbrl.org/bpboarddocs/xbrlorcustomizedxml.pdf.*

[1108] *See id.*

[1109] *See, e.g., The Standard for Reporting, available at https://www.xbrl.org/the-standard/what/the-standard-for-reporting; Financial Statements in XBRL: XBRL designed for Accounts and Financial Statements as well as fixed templates, available at https://www.xbrl.org/the-standard/what/financial-statement-data.*

[1110] Item 601(b)(101) of Regulation S–K [17 CFR 229.601(b)(101)]; Interactive Data Release.

[1111] Exchange Act Rule 13n–11(f)(5) [17 CFR 240.13n–11(f)(5)]. *See also* 2015 Regulation SBSR Release.

[1112] Form N–1A [17 CFR 239.15A]; Rule 405 of Regulation S–T [17 CFR 232.405]. *See also* Interactive Data for Mutual Fund Risk/Return Summary, Release No. 33–9006 (Feb. 11, 2009) [74 FR 7748 (Feb. 19, 2009)] (''Interactive Data for Mutual Funds Release'').

[1113] Exchange Act Rule 17g–2(d) [17 CFR 240.17g–2(d)]; Form NRSRO [17 CFR 249b.300]. *See also* Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34–59342 (Feb. 2, 2009) [74 FR 6456 (Feb. 9, 2009)] (adopting a public disclosure provision requiring NRSROs to make publicly available on their Web site in XBRL format a random sample of ten percent of the ratings histories of issuer-paid credit ratings and to disclose in Exhibit 1 to Form NRSRO the web address where the XBRL data may be accessed); Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34–61050 (Nov. 23, 2009) [74 FR 63831 (Dec. 4, 2009)] (requiring NRSROs to make publicly available on their Web site in XBRL format ratings history information for one hundred percent of their credit ratings initially determined on or after June 26, 2007).

[1114] Item 1111(h) of Regulation AB [17 CFR 229.1111(h)]; Rule 11 of Regulation S–T [17 CFR 232.11]. Registrants will be required to comply with the asset-level disclosure requirements beginning in November 2016. *See* Asset-Backed Securities Disclosure and Registration, Release No. 33–9638 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)] (''2014 ABS Release'').

[1115] Form D [17 CFR 239.500]; Forms 1–A *et seq.* [17 CFR 239.90 *et seq*]; Form C [17 CFR 239.900]; Forms 3, 4, & 5 [17 CFR 249.103–105].

See also Electronic Filing and Revision of Form D, Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592 (Feb. 27, 2008)] (noting that because Form D information consists of relatively simple facts, XML is a sufficient technological solution, and . . . the information tagged in XML [is expected to] be compatible with systems designed for more sophisticated XBRL reporting); 2015 Regulation A Release; Crowdfunding Adopting Release (stating that XML data will enable issuers to provide information in a convenient medium without requiring new technology and will provide the Commission and the public with readily available data about offerings made in reliance on Section 4(a)(6)).

1. Comments Received

S–K Study. One commenter recommended that the Commission assess the value of XBRL for new registrants and their industries and consider allowing voluntary, rather than mandatory, structuring of data by EGCs.[1117] This commenter suggested that this would reduce initial compliance costs for EGCs and allow more time for the market to develop cost-effective XBRL tools, technologies and services.

Disclosure Effectiveness Initiative. One commenter encouraged regulators, in light of advances in technology and connectivity and the ever-increasing demand for data, to look to technology to facilitate the capture, management, analysis, presentation, and delivery of information to investors. This commenter also noted that "technology holds the promise of better (improved quantity and quality of), faster (improved timeliness of), and cheaper (improved access to) information for investors." [1118] Another commenter stated that the ability to download financial tables and other data to better compare companies' disclosures across industries would appear to be particularly useful.[1119] This commenter also noted, however, that the time it takes to prepare the XBRL filing may cause registrants to forego updates to its disclosure in the days prior to filing to allow time for data tagging, and suggested that the Commission explore technological solutions that avoid unnecessary duplication, such as modifying XBRL or using another data tagging system that is more cost and time-efficient.[1120]

One commenter supported the continued improvement of tagging and coding of financial reporting, noting that investors and regulators alike would benefit greatly from real time access to comparable, searchable and sortable data.[1121] By contrast, another commenter indicated that XBRL data was not useful.[1122] One commenter stated that XBRL data should not require with registration statements if it has been previously filed with a Form 10–K or Form 10–Q.[1123]

Several commenters, in a jointly submitted letter, provided a number of specific recommendations to enhance and modernize EDGAR, including enhanced functionality associated with structured data.[1124] The recommendations included enhancements that would allow the user to save XBRL output more easily in Excel and identify tag extensions used by the registrant. Another commenter provided similar recommendations to modernize EDGAR and improve the Commission's data tagging framework and concurred with the jointly submitted letter.[1125] In addition to longer term improvements, this commenter recommended that the Commission extend XBRL or other data tagging requirements to MD&A and other parts of filings.

One commenter recommended that the Commission require complete "non-dimensional" financial statements to improve XBRL quality and usage.[1126] This commenter also recommended that the Commission consider taking steps to improve the comparability of XBRL data by addressing inconsistencies in XBRL extensions. In addition, this commenter recommended expanding XBRL requirements, such as to earnings releases, MD&A, and proxy statements, and requiring filers to make all ownership-related filings available in an XML structured data format.

One commenter encouraged the Commission to transform the current documents-based disclosure system to a system that collects, manages, and disseminates disclosure information as structured data with standardized tags and electronic formats.[1127] This commenter argued that such a system would improve accountability to investors, allow public companies eventually to reduce compliance costs by automating reporting tasks, and improve the Commission's ability to use data analytics to review and evaluate registrants' submissions. As an initial step, this commenter recommended that the Commission adopt Inline XBRL to eliminate the duplication associated with providing the XBRL exhibit in addition to the text-based financial statements, and to "enforce" the quality of XBRL filings.[1128] The commenter further recommended that the Commission work with industry groups to set clearer data standards. This commenter also suggested that the higher cost to market participants of absorbing unstructured disclosure results in higher cost of capital to registrants, particularly smaller registrants.

2. Discussion

The Commission requires registrants and other filers to provide certain information as structured data to facilitate the analysis and improve the accuracy of that information.[1129] When the Commission first adopted rules requiring reporting company registrants to provide financial statement information in XBRL, it cited the potential of structured data to reduce the time required for registrants to prepare their disclosures, to increase the usability of disclosures for investors, and eventually to reduce costs for both registrants and investors, as structured data can help automate regulatory filings and business information processing.[1130]

By requiring structured data, the Commission has sought to make disclosure easier for investors to access, analyze and compare across reporting periods, registrants, and industries.[1131]

[1116] Rule 900(cc) of Regulation SBSR [17 CFR 242.900(cc)].

[1117] *See* Ernst & Young 1.

[1118] *See* CFA Institute. *See also* CFA Report.

[1119] *See* ABA 3.

[1120] *See id.* (citing Emily Chasan, *Costly Data Go Untapped,* The Wall Street Journal, Jan. 22, 2013 ("Chasan"), *available at http://blogs.wsj.com/cfo/2013/01/22/costly-data-go-untapped* (noting that companies have invested in internal systems that they believe are superior to XBRL)).

[1121] *See* AFL–CIO.

[1122] *See* A. Radin (citing Chasan).

[1123] *See* letter from Fran Sesti (Feb. 1, 2016).

[1124] *See* letter from Center for Audit Quality, et al. (May 29, 2015).

[1125] *See* ABA 3.

[1126] *See* TagniFi.

[1127] *See* Data Transparency Coalition.

[1128] We are considering whether to amend the current XBRL tagging requirements with respect to the financial statements of registrants to require the use of "Inline XBRL." Inline XBRL would allow registrants to file the required information and data tags in one document rather than requiring a separate exhibit for the interactive data. Commission rules and the EDGAR system do not currently allow for the use of Inline XBRL. Any such proposal would be subject to public notice and comment as part of a separate rulemaking initiative. In this concept release, we seek comment on the benefits and costs of structured data generally and whether it would be appropriate to extend data tagging requirements to other Commission disclosures.

[1129] *See, e.g.,* Rules 401–405 of Regulation S–T [17 CFR 232.401 *et seq.*]; *See also* Interactive Data Release; *What is Interactive Data and Who's Using It?, available at http://www.sec.gov/spotlight/xbrl/what-is-idata.shtml.*

[1130] *See* Interactive Data Release (noting that interactive data, unlike static, text-based information, (1) can be dynamically searched and analyzed, facilitating the comparison of financial and business performance across companies, reporting periods, and industries, and (2) allows for the automation of regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of financial disclosure and eventually to reduce costs); Interactive Data for Mutual Funds Release (stating the Commission's intent not only to make risk/return summary information easier for investors to analyze but also to assist in automating regulatory filings and business information processing).

[1131] *See* Interactive Data Release; Interactive Data for Mutual Funds Release.

When registrants provide disclosure items in a standardized data format, investors can more easily search and obtain specific information about registrants, compare common disclosures across registrants, and observe how registrant-specific information changes across reporting periods as the same registrant continues to file in a structured data format.[1132] Additionally, data that investors can download, for example, from EDGAR, directly into a spreadsheet or statistical analysis software eliminates the need to enter the information manually, which minimizes the time burden and risk of errors associated with data entry.

In adopting Regulation AB requiring asset-level disclosures in XML, the Commission noted that requiring this information in a standardized machine-readable format makes the data transparent and comparable.[1133] The Commission stated that it expected that this would lower the cost for investors of accessing, collecting and analyzing information, which would lead to better allocation of capital. In requiring the information in XML rather than XBRL, the Commission noted that the relatively simpler data to be presented in these disclosures, in contrast to the rich complexity of corporate financial disclosures, was well-suited for XML.[1134]

Our rules requiring registrants to file financial and other information in a structured format require that data to be filed as an exhibit to the filing rather than embedded in the filing itself.[1135] In this way, the structured data supplements but does not replace the traditional HTML electronic filing format. Having XBRL and other structured data submitted as a separate exhibit, however, has raised a number of issues regarding the accuracy and usability of the data.

First, structured data filed as a separate exhibit does not look like the disclosure in the related HTML document submitted by the registrant unless specially rendered to do so with specialized software.[1136] In an effort to make the XBRL data look more like the HTML document, some registrants create custom elements or dimensions or otherwise alter their XBRL documents. While our rules permit custom or company-specific element extensions for disclosures for which the standard U.S. GAAP taxonomy does not provide an appropriate element, the Commission and its staff have cautioned against custom elements for minor differences[1137] or solely for formatting,[1138] which can inhibit automated parsing processes and potentially create confusion between U.S. GAAP and company specific extension elements. The staff also has found that many registrants create custom axis extensions despite the availability of appropriate standard axis elements in the standard U.S. GAAP taxonomy, further diminishing data quality and impairing comparability across registrants and filings.[1139] These and other potentially inappropriate uses of custom elements identified by Commission staff can affect the quality of the data and its potential use.[1140]

Second, the redundant process of preparing financial statements and periodic reports in HTML or ASCII and then preparing exhibits in XBRL creates a greater chance of data entry and other errors. Staff identified a number of errors, such as characterization of a number as negative when it is positive, missing amounts and calculations, and other inaccuracies,[1141] which may occur more frequently, partially as a result of these redundant processes. Registrants often outsource the structuring of their XBRL reports, thereby adding incremental manual processes and controls to their efforts, which in turn can adversely affect the quality of XBRL-formatted disclosures.[1142] Observers also have noted that XBRL data is not required to be audited, resulting in diminished investor confidence in the quality of the data.[1143]

We continue to explore ways to incorporate structured data. We also continue to explore changes to the Commission's Web site and the EDGAR system that could enhance the usefulness of structured disclosures. For example, in December 2014, the Commission announced a pilot program under which data that registrants provide in structured formats would be combined and organized into structured data sets and posted for bulk downloads on the Commission's Web site for use by investors and academics.[1144]

Concerns have been raised about the costs and time burden associated with structured data requirements. For example, the ACSEC has focused on the costs of structuring disclosures and asserted that the requirements impose a disproportionate burden on smaller registrants in terms of cost and time.[1145] As discussed above, both ACSEC and the Small Business Forum have recommended that the Commission exempt SRCs from the requirement to provide financial information in XBRL.[1146] In its own structured data recommendation, the Investor Advisory Committee generally supported structured data but acknowledged the costs of data tagging and recommended that the Commission take steps to reduce these costs, particularly for smaller registrants and investors.[1147] According to a 2015 AICPA study, however, XBRL filing costs for smaller registrants were lower than initially expected and have been decreasing since the 2009 inception of the Commission's Structured Data Program.[1148]

[1132] *See* Concept Release on the U.S. Proxy System, Release No. 34–62495 (July 14, 2010) [75 FR 42982 (July 21, 2010)].

[1133] *See* 2014 ABS Release.

[1134] *Id.*

[1135] *See, e.g.,* Item 601(b)(100) of Regulation S–K [17 CFR 229.601(b)(100)]; Rule 401 of Regulation S–T [17 CFR 232.401].

[1136] *See* Staff Observations from the Review of Interactive Data Financial Statements (Dec. 13, 2011) ("December 2011 Staff Observations"), *available at http://www.sec.gov/spotlight/xbrl/staff-review-observations-121311.shtml.*

[1137] EDGAR Filer Manual, Vol. II, v. 35 (Dec. 2015) at 6–28.

[1138] *See* Regulation S–T Compliance and Disclosure Interpretations, Question 130.08 *available at https://www.sec.gov/divisions/corpfin/guidance/regs-tinterp.htm. See also* December 2011 Staff Observations (encouraging registrants to concentrate on the quality of the tagging rather than trying to match the rendering of the XBRL exactly to the HTML filing and advising registrants not to create custom elements or use incorrect dates to achieve specific rendering results).

[1139] *See* Staff Observations of Custom Axis Tags (Mar. 29, 2016) ("2016 Staff Observations"), *available at: https://www.sec.gov/structureddata/reportspubs/osd_assessment_custom-axis-tags.html.*

[1140] *See id. See also,* Staff Observations of Custom Tag Rates (July 7, 2014) ("2014 Staff Observations"), *available at http://www.sec.gov/dera/reportspubs/assessment-custom-tag-rates-xbrl.html* (in which, for a random sample of filings that staff reviewed, staff observed instances of filers creating custom axis tags unnecessarily when an appropriate standard axis tag existed in the U.S. GAAP taxonomy).

An axis tag allows a filer to divide reported elements into different dimensions (*e.g.,* revenue by geographical area, fair value measurement levels, components of total equity (*e.g.,* common, preferred)). In a recent assessment of custom axis extensions use in XBRL exhibits, DERA staff reported that despite the overall decline in the use of custom tags generally, approximately 50% of filers continue to create custom axis tags, with large accelerated filers using custom axis tags more than twice as often as SRCs. DERA staff suggested that a contributing factor may be that SRCs likely have less complex financial disclosures that can be structured primarily using axis options provided by the U.S. GAAP taxonomy. *See* 2016 Staff Observations.

In a previous review of the use of custom tags in general in XBRL exhibits, the staff found a steady decline in custom element use by larger registrants, indicating improvements in the U.S. GAAP taxonomy and registrants' selections of tags. However, in contrast to the recent findings on axis extensions, the staff found that smaller filers were associated with an average custom tag rate almost 50% greater than that of larger filers. Staff analysis also revealed that some of the perceived quality issues associated with XBRL data are correlated with particular third-party providers of XBRL software and services, which may be, at least in part, due to continued innovation and growth in the market for filer software and services, resulting in offerings of varying functionality and ease of use. *See id;* 2014 Staff Observations.

[1141] *See, e.g.,* December 2011 Staff Observations; Staff Observations From Review of Interactive Data Financial Statements (Jun. 15, 2011), *available at http://www.sec.gov/spotlight/xbrl/staff-review-observations-061511.shtml.*

[1142] *See Disclosure management: Streamlining the Last Mile,* PricewaterhouseCoopers (Mar. 2012), *available at https://www.pwc.com/gx/en/xbrl/pdf/pwc-streamlining-last-mile-report.pdf.*

[1143] *See* Trevor S. Harris and Suzanne Morsfield, *An Evaluation of the Current State and Future of XBRL and Interactive Data for Investors and Analysts—White Paper Number Three,* Columbia Business School Center for Excellence in Accounting and Security Analysis, Dec. 2012, *available at http://www8.gsb.columbia.edu/ceasa/sites/ceasa/files/An%20Evaluation%20of%20the%20Current%20State%20and%20Future%20of%20XBRL%20and%20Interactive%20Data%20for%20Investors%20and%20Analysts.pdf.*

[1144] *See SEC Announces Program to Facilitate Analysis of Corporate Financial Data* (Dec. 30, 2014), *available at http://www.sec.gov/news/pressrelease/2014-295.html;* Financial Statement Data Sets, *available at http://www.sec.gov/dera/data/financial-statement-data-sets.html.*

We acknowledge that registrants may incur costs to provide disclosure in structured data format, particularly initial set-up costs. We seek public comment on ways to minimize the costs of providing structured disclosures, particularly over time, while still realizing the intended benefits to investors and other users of such disclosures.

3. Request for Comment

330. How can the quality of structured disclosures be enhanced?

331. Are there changes to the EDGAR system that the Commission should make to render the structured disclosure filed by registrants more useful?

332. Are company-specific custom extensions, such as element or axis extensions, useful to investors or other users of structured disclosures? If so, how might these custom extensions be made more useful for enhancing automated analysis? If not, are there better ways to express disclosures that are unique to a company (*e.g.*, business segment, product line)?

333. Should we require registrants to provide additional disclosures in a structured format? If so, which disclosures? For example, are there categories of information in Parts I and II of Form 10–K or in Form 10–Q that investors would want to receive as structured data?

334. To the extent that we consider additional structured data requirements for disclosure in periodic reports, what level of structured data requirements would be appropriate? For example, should we require registrants to identify sections, sub-sections or topics with "block text" labels, or should we require registrants to structure numeric elements and tables individually? What would be the challenges and costs of such an approach? What would be the benefit?

335. How does the availability of structured data in registrants' periodic reports affect the timeliness, efficiency, or depth of investors' review of disclosures? How do the effects of structured disclosure requirements vary across investor types? Are there other methods of structuring disclosures that would make disclosures more accessible or useful?

336. To what extent is the information currently provided in structured disclosures readily available through other sources, such as third-party data aggregators? What are the costs and benefits to investors of obtaining this data from such third parties rather than through the use of structured disclosures filed by registrants?

337. To what extent do investors, analysts, third-party data aggregators, or other market participants rely on structured data provided by registrants in their periodic reports? What specific content in structured disclosures is useful to each of these groups?

338. Are there other ways in which our requirements can improve the accuracy of tagged data? What would be the challenges to registrants posed by such alternatives?

339. Are there certain categories of registrant for which we should provide an exemption from some or all structured disclosure requirements, require more limited information to be tagged, or require a different presentation of this information? Why or why not? If so, to which registrants or structured disclosure requirements should such exemptions apply?

340. In requiring structured data, the Commission has sought to make disclosure easier for investors to access, analyze and compare across reporting periods, registrants, and industries.[1149] Are there other technologies that could make disclosure easier for investors to access, analyze and compare? If so, how should we incorporate these technologies into our disclosure requirements?

VI. Conclusion

We are interested in the public's views on any of the matters discussed in this concept release or on the staff's Disclosure Effectiveness Initiative. We encourage all interested parties to submit comment on these topics. If possible, please reference the specific question numbers or sections of the release when submitting comments. In addition to investors and registrants, the Commission welcomes comment from other market participants and particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised. We also solicit comment on any other aspect of our disclosure requirements in Regulation S–K that commenters believe may be improved upon. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: April 13, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–09056 Filed 4–21–16; 8:45 am]

BILLING CODE 8011–01–P

[1145] *See* 2015 ACSEC Recommendations; 2013 ACSEC Recommendations.

[1146] *See* Section IV.H.2.b.

[1147] *See* IAC Data Tagging Recommendations.

[1148] *See* American Institute of CPAs, *Research Shows XBRL Filing Costs Lower than Expected* (Jan. 2015), *available at https://www.aicpa.org/interestareas/frc/accountingfinancialreporting/xbrl/pages/xbrlcostsstudy.aspx.*

[1149] *See* supra notes 1130 to 1131.

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